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35-1-101. Renumbered 35-1-112. Sec. 221, Ch. 368, L. 1991.

35-1-102. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202; amd. Sec. 1, Ch. 475, L. 1981; amd. Sec. 2, Ch. 273, L. 1989.

35-1-103. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-104. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.

35-1-105. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.

35-1-106. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.

35-1-107. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.

35-1-108. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204; amd. Sec. 2, Ch. 475, L. 1981.

35-1-109. Renumbered 35-1-119. Sec. 221, Ch. 368, L. 1991.

35-1-110. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

35-1-111. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

35-1-112. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201; Sec. 35-1-101, MCA 1989; redes. 35-1-112 by Sec. 221, Ch. 368, L. 1991.

35-1-113. Definitions. As used in this chapter, the following definitions apply:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(3) "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

(4) "Conspicuous" means written so that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics, boldface, or contrasting color or typing in capitals or underlining is conspicuous.

(5) "Corporation" or "domestic corporation" means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to the provisions of this chapter.

(6) "Deliver" includes mail.

(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or an incurrence of indebtedness, by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or other form.

(8) "Effective date of notice" means the date determined as provided in 35-1-116.

(9) "Employee" includes an officer but not a director. A director may accept duties that make that director an employee.

(10) "Entity" includes:

(a) a corporation and a foreign corporation;

(b) a not-for-profit corporation;

(c) a profit and a not-for-profit unincorporated association;

(d) a business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and

(e) a state, the United States, or a foreign government.

(11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(12) "Governmental subdivision" includes an authority, county, district, and city or town.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Means" denotes an exhaustive definition.

(16) "Notice" means notice as provided in 35-1-116.

(17) "Person" includes an individual and an entity.

(18) "Principal office" means the office, whether in-state or out-of-state, that is designated in the annual report as the office where the principal executive offices of a domestic or foreign corporation are located.

(19) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(20) "Record date" means the date established under 35-1-535, 35-1-618 through 35-1-630, and 35-1-712 or under 35-1-516 through 35-1-533 and 35-1-541 through 35-1-548 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determination must be made as of the close of business on the record date unless another time for determination is specified when the record date is fixed.

(21) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-1-441 for custody of the minutes of the meetings of the board of directors, for custody of the minutes of the shareholders' meetings, and for authenticating records of the corporation.

(22) "Share" means the unit into which the proprietary interests in a corporation are divided.

(23) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(24) "State", when referring to a part of the United States, includes a state, commonwealth, territory, or insular possession of the United States and the agencies and governmental subdivisions of the entities listed.

(25) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(26) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(27) "Voting group" means shares of one or more classes or series that under the articles of incorporation of this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

History: En. Sec. 1, Ch. 368, L. 1991; amd. Sec. 2, Ch. 33, L. 2007.

35-1-114. Purposes. (1) Each corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation organized under another statute of this state may incorporate under this chapter only if the incorporation is permitted by and subject to all limitations of the other statute.

(3) Subject to the limitation in subsection (2), corporations may be organized under this chapter for any lawful purpose or purposes except for the purpose of banking or insurance.

History: En. Sec. 22, Ch. 368, L. 1991.

Cross-References

Banks — formation and reorganization, Title 32, ch. 1, part 3.

Certificate of authority for insurance transactions, 33-2-101.

35-1-115. General powers. Unless its articles of incorporation provide otherwise, each corporation has perpetual duration and succession in its corporate name and, unless otherwise prohibited by law, has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in, or obligations of any other entity;

(7) to make contracts and guarantees; to incur liabilities; to borrow money; to issue its notes, bonds, and other obligations, which, if authorized by the articles of incorporation, may be convertible into or include the option to purchase other securities of the corporation; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(11) to elect directors and appoint officers, employees, and agents of the corporation; to define their duties; to fix their compensation; and to lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, to make donations in aid of war activities;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or to do any other act that is consistent with law and that furthers the business and affairs of the corporation.

History: En. Sec. 23, Ch. 368, L. 1991; amd. Sec. 1, Ch. 249, L. 1993.

Cross-References

Prohibited contributions from corporations for candidates or political parties, 13-35-227.

35-1-116. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholders, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent; or

(b) the corporation or its secretary at its principal office as shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid with correct postage; or

(c) on the date shown on the return receipt, if sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: En. Sec. 2, Ch. 368, L. 1991; amd. Sec. 19, Ch. 240, L. 2007.

35-1-117. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) in a proceeding by a shareholder against the corporation to enjoin the act; or

(b) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

(3) In a shareholder's proceeding under subsection (2)(a) to enjoin an unauthorized corporate act, the court may:

(a) enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding; and

(b) award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

History: En. Sec. 24, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.
Involuntary dissolution by Secretary of State, Title 35, ch. 6, part 1.
Reinstatement, Title 35, ch. 6, part 2.

35-1-118. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: En. Sec. 3, Ch. 368, L. 1991.

35-1-119. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135; amd. Sec. 3, Ch. 475, L. 1981; Sec. 35-1-109, MCA 1989; redes. 35-1-119 by Sec. 221, Ch. 368, L. 1991.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Part 2
Formation — Articles of Incorporation — Bylaws

Part Cross-References

Certificate of existence or authorization, 35-1-1312.
Formation, articles of incorporation, bylaws, and amendments of nonprofit corporations, Title 35, ch. 2, part 2.
Formation and operation of religious corporations sole, Title 35, ch. 3, part 2.
Organization and regulation of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited liability companies, Title 35, ch. 8, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles of incorporation, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-1-201. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247; amd. Sec. 11, Ch. 131, L. 1983; amd. Sec. 9, Ch. 174, L. 1983.

35-1-202. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248; amd. Sec. 6, Ch. 475, L. 1981; amd. Sec. 1, Ch. 559, L. 1987.

35-1-203. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249; amd. Sec. 12, Ch. 131, L. 1983.

35-1-204. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252; amd. Sec. 7, Ch. 475, L. 1981.

35-1-207. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253; amd. Sec. 8, Ch. 475, L. 1981.

35-1-208. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254; amd. Sec. 9, Ch. 475, L. 1981.

35-1-209. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255; amd. Sec. 10, Ch. 475, L. 1981; amd. Sec. 13, Ch. 131, L. 1983; amd. Sec. 10, Ch. 174, L. 1983.

35-1-210. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256; amd. Sec. 14, Ch. 131, L. 1983.

35-1-211. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257; amd. Sec. 11, Ch. 475, L. 1981.

35-1-212. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259; amd. Sec. 12, Ch. 475, L. 1981; amd. Sec. 15, Ch. 131, L. 1983; amd. Sec. 11, Ch. 174, L. 1983.

35-1-213. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part); amd. Sec. 13, Ch. 475, L. 1981; amd. Sec. 16, Ch. 131, L. 1983; amd. Sec. 12, Ch. 174, L. 1983; amd. Sec. 1, Ch. 456, L. 1983; amd. Sec. 1, Ch. 445, L. 1985.

35-1-214. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

35-1-215. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 16, Ch. 368, L. 1991.

Cross-References

Secretary of State to establish filing fees for articles of incorporation, 35-1-1206.

35-1-216. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-1-308;

(b) the number of shares the corporation is authorized to issue;

(c) (i) the information required by 35-7-105(1); and

(ii) the name of its initial registered agent; and

(d) the name and business mailing address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and complete street addresses of the individuals who are to serve as the initial directors;

(b) provisions consistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares; and

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(c) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(d) a provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any actions taken or any failure to take any action, as a director, except liability for:

(i) the amount of a financial benefit received by a director to which the director is not entitled;

(ii) an intentional infliction of harm on the corporation or the shareholders;

(iii) a violation of 35-1-713; or

(iv) an intentional violation of criminal law.

(3) The articles of incorporation are not required to set forth any of the corporate powers enumerated in this chapter.

History: En. Sec. 17, Ch. 368, L. 1991; amd. Sec. 5, Ch. 75, L. 2003; amd. Sec. 20, Ch. 240, L. 2007; amd. Sec. 8, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) before "address" inserted "business mailing". Amendment effective October 1, 2011.

35-1-217. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. It may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations need not be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The document may but need not contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for the document under rules adopted pursuant to 35-1-1315.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 368, L. 1991; amd. Sec. 6, Ch. 75, L. 2003; amd. Sec. 3, Ch. 33, L. 2007.

Cross-References

Articles of dissolution, 35-1-933.

Filing fees, 35-1-1206.

35-1-218. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 368, L. 1991; amd. Sec. 5, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.
Trademarks — filing of facsimile copy, 30-13-341.
Nonprofit corporations — facsimile filing, 35-2-120.
Limited liability company — facsimile filing, 35-8-207.
Partnerships — facsimile filing, 35-10-112.
Limited partnerships — facsimile filing, 35-12-615.
Cooperative associations — facsimile filing, 35-15-211.

35-1-219. Effective time and date of document. (1) Except as provided in 35-1-221 and subsection (2) of this section, a document accepted for filing is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 9, Ch. 368, L. 1991.

35-1-220. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 18, Ch. 368, L. 1991.

35-1-221. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by:

(a) preparing articles of correction that:

(i) describe the document including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) delivering the articles to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 10, Ch. 368, L. 1991.

35-1-222. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state.

History: En. Sec. 19, Ch. 368, L. 1991.

35-1-223 and 35-1-224 reserved.

35-1-225. Authority to amend. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

History: En. Sec. 112, Ch. 368, L. 1991.

Cross-References

Shareholders' preemptive rights, 35-1-535.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-226. Amendment by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) to delete the names and addresses of the initial directors;

(3) to change the information required by 35-7-105(1);

(4) to change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding;

(5) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution for the name; or

(6) to make any other change expressly permitted by this chapter to be made without shareholders' action.

History: En. Sec. 113, Ch. 368, L. 1991; amd. Sec. 21, Ch. 240, L. 2007.

35-1-227. Amendment by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) the board of directors shall recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) the shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice of meeting must also state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights; and

(b) the votes required by 35-1-528 and 35-1-529 by every other voting group entitled to vote on the amendment.

History: En. Sec. 114, Ch. 368, L. 1991.

35-1-228. Voting on amendments by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would:

(a) increase or decrease the aggregate number of authorized shares of the class;

(b) cause an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) cause an exchange or reclassification of or create the right of exchange of all or part of the shares of another class into shares of the class;

(d) change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) change the shares of all or part of the class into a different number of shares of the same class;

(f) create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to dissolution or to distributions that are prior, superior, or substantially equal to the shares of the class;

(h) limit or deny an existing preemptive right of all or part of the share of the class; or

(i) cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to be voted as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares to be voted as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shareholders of all the series affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

History: En. Sec. 115, Ch. 368, L. 1991.

Cross-References

Voting entitlement of shares, 35-1-524.
Voting on merger or share exchange, 35-1-815.
Voting on sale of assets, 35-1-823.
Voting on voluntary dissolution, 35-1-932.

35-1-229. Amendment before issuance of shares. If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

History: En. Sec. 116, Ch. 368, L. 1991.

35-1-230. Articles of amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) if an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) the date of each amendment's adoption;

(5) if an amendment was adopted by the incorporators or board of directors without shareholders' action, a statement to that effect and that shareholders' action was not required; and

(6) if an amendment was approved by the shareholders:

(a) the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and

(b) either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group that was sufficient for approval by that voting group.

History: En. Sec. 117, Ch. 368, L. 1991.

Cross-References

Amendment filing fees, 35-1-1206.

Appeal from Secretary of State's refusal to file amended articles, 35-1-1310.

35-1-231. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholders' action.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholders' approval, it must be adopted as provided in 35-1-227.

(3) If the board of directors submits a restatement for shareholders' action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy of the restatement that identifies any amendment or other change the restatement would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(b) if the restatement contains an amendment to the articles requiring shareholders' approval, the information required by 35-1-230.

(5) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (4).

History: En. Sec. 118, Ch. 368, L. 1991.

Cross-References

Articles of incorporation, 35-1-216.

Filing fees, 35-1-1206.

35-1-232. Amendment pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation, after amendment, contain only provisions required or permitted by 35-1-216.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: En. Sec. 119, Ch. 368, L. 1991.

35-1-233. Effect of amendment. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is party, or the existing rights of persons other than shareholders of the corporation.

An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: **En. Sec. 120, Ch. 368, L. 1991.**

35-1-234. Bylaw amendment by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) the articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(b) the shareholders in amending, adding, or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

History: **En. Sec. 121, Ch. 368, L. 1991.**

35-1-235. Extension of duration of corporation. If a corporation is dissolved by the expiration of its period of duration as stated in its articles of incorporation, the corporation may amend its articles of incorporation within 5 years from the stated date of expiration to extend its existence.

History: **En. Sec. 8, Ch. 249, L. 1993.**

35-1-236. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is consistent with law or the articles of incorporation.

History: **En. Sec. 20, Ch. 368, L. 1991.**

35-1-237. Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) procedures for calling a meeting of the board of directors;

(b) quorum requirements for the meeting; and

(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) binds the corporation; and

(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: **En. Sec. 21, Ch. 368, L. 1991.**

35-1-238. Bylaw increasing quorum or voting requirement for shareholders. (1) If expressly authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) may not be adopted, amended, or repealed by the board of directors.

History: **En. Sec. 122, Ch. 368, L. 1991.**

35-1-239. Bylaw increasing quorum or voting requirement for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders; or

(b) if originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that the bylaw may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

History: **En. Sec. 123, Ch. 368, L. 1991.**

Part 3
Corporate Name, Registered Office and Agent, and Service of Process

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Business trust name, 35-5-201.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-1-301. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981; amd. Sec. 2, Ch. 456, L. 1983.**

35-1-302. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.**

35-1-303. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209; amd. Sec. 3, Ch. 456, L. 1983; amd. Sec. 2, Ch. 445, L. 1985.**

35-1-304. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210; amd. Sec. 3, Ch. 445, L. 1985.**

35-1-305. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.**

35-1-306. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212; amd. Sec. 17, Ch. 131, L. 1983; amd. Sec. 13, Ch. 174, L. 1983.**

35-1-307. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.**

35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word “corporation”, “incorporated”, “company”, or “limited”; the abbreviation “corp.”, “inc.”, “co.”, or “ltd.”; or words or abbreviations of similar meaning in another language;

(b) may not contain business name identifiers, as defined in 30-13-201, or language that states or implies that the corporation is a business other than a corporation; and

(c) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, limited liability company, or limited partnership may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership that is used in this state if the other corporation, limited liability company, or limited partnership is incorporated or authorized to transact business in this state and the proposed user corporation, limited liability company, or limited partnership:

(a) has merged with the other corporation, limited liability company, or limited partnership;

(b) has been formed by reorganization of the other corporation, limited liability company, or limited partnership;

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, limited liability company, or limited partnership; or

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names.

History: En. Sec. 25, Ch. 368, L. 1991; amd. Sec. 83, Ch. 120, L. 1993; amd. Sec. 6, Ch. 229, L. 1999; amd. Sec. 3, Ch. 27, L. 2001.

Cross-References

Exclusivity of assumed business names, 30-13-202.
Trademarks and service marks, Title 30, ch. 13, part 3.
Name of foreign corporation, 35-1-1031.
Limited liability company name, 35-8-103.
Limited partnership name, 35-12-505.

35-1-309. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: En. Sec. 26, Ch. 368, L. 1991.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-1-310. Contest of registration of name — penalty. (1) A person doing business in this state may contest the registration of a name under this section with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who registered the contested name. The notice to the secretary of state must be accompanied by a $100 deposit, which the secretary of state shall award to the prevailing party in the contest.

(2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with the secretary of state

before the hearing and attempt to settle the contest. If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the Montana Administrative Procedure Act apply.

(3) The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

(a) the strength or unique nature of the names;

(b) the similarity of sound, appearance, or meaning of the names;

(c) the intent of the parties;

(d) the type of businesses engaged in or to be engaged in by the parties;

(e) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;

(f) the nature and quality of goods or services provided by the parties;

(g) the level of sophistication of potential purchasers of goods or services offered by the parties;

(h) the length of time the parties have been transacting business under the name or names in question;

(i) whether the party contesting the registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(j) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

(4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and may order that the contested name be changed in the records of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

(5) The secretary of state may order that the losing party pay any attorney fees and costs incurred by the prevailing party to contest the name or by the secretary of state to administer the provisions of this section, including any hearings.

(6) A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

(7) (a) A person who registers an assumed business name under 30-13-202 with the intent to deceive or harass another person doing legitimate business under the laws of this state is subject to a penalty of $1,000 in a civil action brought by a county attorney in the district court with jurisdiction for the county.

(b) A penalty collected pursuant to subsection (7)(a) must be deposited in the county general fund.

History: En. Sec. 181, Ch. 368, L. 1991; amd. Sec. 2, Ch. 110, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 110 in (1) in first sentence near beginning after "may contest the" deleted "subsequent" and near end after "the notice of contest to the person who" deleted "subsequently"; inserted (3)(h) providing that the secretary shall consider the length of time the parties have been transacting business under the name or names in question; in (3)(i) near beginning after "the party contesting the" deleted "subsequent"; inserted (5) concerning the payment of attorney fees and costs incurred by the prevailing party; inserted (7)(a) and (7)(b) concerning the penalty for the registration of an assumed business name and requiring the penalty to be deposited in the county general fund; and made minor changes in style. Amendment effective April 1, 2011.

Cross-References

Term and renewal of assumed business name registration, 30-13-206.

35-1-311. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by 35-1-1031, if the name is distinguishable in the records of the secretary of state from the corporate names that are not available under 35-1-308(2)(c).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by 35-1-1031, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name, or its corporate name with any addition required by 35-1-1031, the state or country, the date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: En. Sec. 27, Ch. 368, L. 1991.

35-1-312 reserved.

35-1-313. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 28, Ch. 368, L. 1991; amd. Sec. 7, Ch. 229, L. 1999.

35-1-314. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 29, Ch. 368, L. 1991; amd. Sec. 7, Ch. 75, L. 2003.

35-1-315. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 30, Ch. 368, L. 1991.

35-1-316. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 31, Ch. 368, L. 1991.

35-1-317. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 32, Ch. 368, L. 1991.

Part 4
Directors and Officers

Part Cross-References

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.
Montana Close Corporation Act, Title 35, ch. 9.
Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.
Members and directors of agricultural associations, Title 35, ch. 16, part 3.
Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.
Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.
Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-1-401. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233; amd. Sec. 16, Ch. 475, L. 1981.

35-1-402. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234; amd. Sec. 17, Ch. 475, L. 1981.

35-1-403. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.

35-1-404. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239; amd. Sec. 18, Ch. 475, L. 1981.

35-1-405. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.

35-1-406. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 19, Ch. 475, L. 1981.

35-1-407. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238; amd. Sec. 20, Ch. 475, L. 1981.

35-1-408. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236; amd. Sec. 21, Ch. 475, L. 1981.

35-1-409. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242; amd. Sec. 22, Ch. 475, L. 1981.

35-1-410. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.

35-1-411. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.

35-1-412. Renumbered 35-1-428. Sec. 221, Ch. 368, L. 1991.

35-1-413. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 23, Ch. 475, L. 1981.

35-1-414. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 4, Ch. 475, L. 1981.

35-1-415. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 5, Ch. 475, L. 1981.

35-1-416. Requirement for and duties of board of directors. (1) Each corporation must have a board of directors.

(2) Subject to any limitation set forth in the articles of incorporation, all corporate powers must be exercised by or under the authority of the board of directors, and the business and affairs of the corporation must be managed under the direction of its board of directors.
History: En. Sec. 75, Ch. 368, L. 1991.

Cross-References
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

35-1-417. Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless required by the articles of incorporation or bylaws.
History: En. Sec. 76, Ch. 368, L. 1991.

35-1-418. General standards for directors. (1) A director shall discharge the duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner that the director reasonably believes to be in the best interests of the corporation.

(2) In discharging duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters that the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable for any action taken as a director or for any failure to take any action if the director performed the duties of the director's office in compliance with this section.
History: En. Sec. 92, Ch. 368, L. 1991; amd. Sec. 1256, Ch. 56, L. 2009.

Cross-References
Prohibited contributions from corporations for candidates or political parties, 13-35-227.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

35-1-419. Number and election of directors. (1) A board of directors consists of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by 30% or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than 30% the number of directors last approved by the shareholders.

(3) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum limits, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(4) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under 35-1-422.

History: En. Sec. 77, Ch. 368, L. 1991.

Cross-References

Actions to oust irregularly elected directors, 27-28-401, 27-28-402.

35-1-420. Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

History: En. Sec. 78, Ch. 368, L. 1991.

35-1-421. Terms of directors generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under 35-1-422.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected or appointed to fill a vacancy is elected or appointed for the unexpired term of the director's predecessor in office.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors.

History: En. Sec. 79, Ch. 368, L. 1991; amd. Sec. 1257, Ch. 56, L. 2009.

35-1-422. Staggered terms for directors. If there are nine or more directors, the articles of incorporation or bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing as near as possible to one-half or one-third of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

History: En. Sec. 80, Ch. 368, L. 1991.

35-1-423. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, to its presiding officer, or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specified a later effective date.

History: En. Sec. 81, Ch. 368, L. 1991; amd. Sec. 1258, Ch. 56, L. 2009.

35-1-424. Removal of directors. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) Any director or the entire board of directors may be removed only by a vote of the holders of two-thirds of the shares entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the shareholders have the right to cumulate their votes when electing directors and if less than the entire board is to be removed, a director may not be removed if the votes cast against the director's removal would be sufficient to elect the director if cumulatively voted at an election of the entire board of directors or, if there are classes of directors, at an election of the class of directors of which the director is a part. If the corporation has fewer than 100 shareholders, the entire board of directors may be removed only by a vote of a majority of the shares then entitled to vote.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

History: En. Sec. 82, Ch. 368, L. 1991; amd. Sec. 1259, Ch. 56, L. 2009.

Cross-References

Elimination of board of directors, 35-9-302.

35-1-425. Removal of directors by judicial proceeding. (1) The district court of the county where a corporation's principal office is located or, if the office is not located in this state, in Lewis and Clark County may remove a director of the corporation from office in a proceeding begun either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that:

(a) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion, with respect to the corporation; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders begin a proceeding under subsection (1), they shall make the corporation a party defendant.

History: En. Sec. 83, Ch. 368, L. 1991; amd. Sec. 22, Ch. 240, L. 2007.

35-1-426. Vacancy on board. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) the shareholders may fill the vacancy;

(b) the board of directors may fill the vacancy; or

(c) if the members of the board of directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-1-423 or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 84, Ch. 368, L. 1991.

35-1-427. Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: En. Sec. 85, Ch. 368, L. 1991.

35-1-428. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this chapter.

History: En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126; amd. Sec. 14, Ch. 174, L. 1983; Sec. 35-1-412, MCA 1989; redes. 35-1-428 by Sec. 221, Ch. 368, L. 1991; amd. Sec. 1260, Ch. 56, L. 2009.

Cross-References

False swearing, 45-7-202.

35-1-429 and 35-1-430 reserved.

35-1-431. Meetings. (1) The board of directors may hold regular or special meetings in the state or out of the state.

(2) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting must be prepared and be distributed to each director.

History: En. Sec. 86, Ch. 368, L. 1991.

35-1-432. Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes or filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: En. Sec. 87, Ch. 368, L. 1991.

35-1-433. Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least 2 days' notice of the date, time, and place of the meeting. The notice is not required to describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History: En. Sec. 88, Ch. 368, L. 1991.

35-1-434. Waiver of notice. (1) A director may waive a notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not vote for or assent to action taken at the meeting.

History: En. Sec. 89, Ch. 368, L. 1991.

35-1-435. Quorum — voting. (1) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(a) a majority of the fixed number of directors if the corporation has a fixed board size; or

(b) a majority of the number of directors prescribed or, if a number is not prescribed, the number in office immediately before the meeting begins if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless:

(a) the director objects at the beginning of the meeting or promptly upon the director's arrival to holding the meeting or transacting business at the meeting and delivers written notice of the director's objection to the presiding officer before its adjournment or to the corporation immediately after adjournment of the meeting;

(b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) the director delivers written notice of the dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

(5) The right of dissent or abstention is not available to a director who votes in favor of the action taken.

History: En. Sec. 90, Ch. 368, L. 1991; amd. Sec. 1261, Ch. 56, L. 2009.

35-1-436 through 35-1-438 reserved.

35-1-439. Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee may have two or more members who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the articles of incorporation or bylaws to take action under 35-1-435.

(3) Sections 35-1-431 through 35-1-435, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under 35-1-416. However, a committee may not:

(a) authorize distributions;

(b) approve or propose to shareholders action that this chapter requires to be approved by shareholders;

(c) fill vacancies on the board of directors or on any of its committees;

(d) amend articles of incorporation;

(e) adopt, amend, or repeal bylaws;

(f) approve a plan of merger not requiring shareholder approval;

(g) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(h) authorize or approve the issuance of or sale or contract for sale of shares or determine the designation and relative rights, preferences, and limitations of a class or series of shares. However, the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(5) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-1-418.

History: En. Sec. 91, Ch. 368, L. 1991.

35-1-440 reserved.

35-1-441. Required officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation.

History: En. Sec. 94, Ch. 368, L. 1991.

35-1-442. Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

History: **En. Sec. 95, Ch. 368, L. 1991.**

35-1-443. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge duties under that authority:

(a) in good faith;

(b) with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging an officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) attorneys, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable for any action taken as an officer or for any failure to take any action if the officer performed the duties of office in compliance with this section.

History: **En. Sec. 96, Ch. 368, L. 1991; amd. Sec. 1262, Ch. 56, L. 2009.**

35-1-444. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(2) The board of directors may remove any officer with or without cause, and if authorized by the bylaws or by the board of directors, an officer may remove an officer or assistant officer appointed by that officer under 35-1-441 with or without cause.

History: **En. Sec. 97, Ch. 368, L. 1991.**

35-1-445. Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: **En. Sec. 98, Ch. 368, L. 1991.**

35-1-446 through 35-1-450 reserved.

35-1-451. Definitions. As used in 35-1-451 through 35-1-459, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation include duties or services by the director to the plan or to participants in or beneficiaries of the plan.

(b) The term includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-1-457, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) The term does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 99, Ch. 368, L. 1991; amd. Sec. 1263, Ch. 56, L. 2009.

35-1-452. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if:

(a) the individual engaged in good faith conduct;

(b) the individual reasonably believed:

(i) in the case of conduct in an official capacity with the corporation, that the individual's conduct was in the corporation's best interests; and

(ii) in all other cases, that the individual's conduct was at least not opposed to the corporation's best interests; and

(c) in the case of any criminal proceeding, the individual did not have reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 100, Ch. 368, L. 1991; amd. Sec. 1264, Ch. 56, L. 2009.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-1-453. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the individual is or was a director of the corporation, against reasonable expenses incurred by the director in connection with the proceeding.

History: En. Sec. 101, Ch. 368, L. 1991; amd. Sec. 1265, Ch. 56, L. 2009.

35-1-454. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-1-452;

(b) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct described in 35-1-452; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-1-451 through 35-1-459.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-1-456.

History: En. Sec. 102, Ch. 368, L. 1991.

35-1-455. Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines that the director:

(1) is entitled to mandatory indemnification under 35-1-453, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-1-452 or was adjudged liable as described in 35-1-452(4). If the director was adjudged liable as described in 35-1-452(4), the director's indemnification is limited to reasonable expenses incurred.

History: En. Sec. 103, Ch. 368, L. 1991.

35-1-456. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-1-452 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-1-452.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

History: En. Sec. 104, Ch. 368, L. 1991.

35-1-457. Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-1-453 and is entitled to apply for court-ordered indemnification under 35-1-455 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-1-451 through 35-1-459 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 105, Ch. 368, L. 1991.

35-1-458. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under 35-1-452 or 35-1-453.

History: En. Sec. 106, Ch. 368, L. 1991; amd. Sec. 1266, Ch. 56, L. 2009.

35-1-459. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-1-451 through 35-1-459. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) Sections 35-1-451 through 35-1-459 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 107, Ch. 368, L. 1991.

35-1-460 reserved.

35-1-461. Definitions. As used in 35-1-461 through 35-1-464, the following definitions apply:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest if:

(a) regardless of whether the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) the transaction is brought, or is of a character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or is so closely linked to the transaction and the transaction is of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(i) an entity, other than the corporation, of which the director is a director, general partner, agent, or employee;

(ii) a person who controls one or more of the entities specified in subsection (1)(b)(i) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subsection (1)(b)(i); or

(iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction", with respect to a corporation, means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest in which transaction a director of the corporation has a conflicting interest.

(3) "Related person" means:

(a) the spouse or a parent or sibling of a spouse of the director;

(b) a child, grandchild, sibling, parent or spouse of any child, grandchild, sibling, or parent of the director;

(c) an individual having the same residence as the director;

(d) a trust or estate of which an individual specified in this subsection (3) is a substantial beneficiary; or

(e) a trust, estate, incompetent person, conservatee, or minor for whom the director is a fiduciary.

(4) "Required disclosure" means disclosure by a director, who has a conflicting interest, of:

(a) the existence and nature of the conflicting interest; and

(b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

History: En. Sec. 108, Ch. 368, L. 1991; amd. Sec. 1267, Ch. 56, L. 2009.

35-1-462. Judicial action. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation or any person with whom the director has a personal, economic, or other association has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director or any person with whom the director has a personal, economic, or other association has an interest in the transaction if:

(a) directors' action respecting the transaction was at any time taken in compliance with 35-1-463;

(b) shareholders' action respecting the transaction was at any time taken in compliance with 35-1-464; or

(c) the transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

History: En. Sec. 109, Ch. 368, L. 1991.

35-1-463. Directors' action. (1) Directors' action respecting a transaction is effective for purposes of 35-1-462(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on an empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2). Action by a committee is effective only if all its members are qualified directors and its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction but neither the director nor a related person of the director specified in 35-1-461(3) is a party to the transaction and if the director has a duty under law or professional canon or a duty of confidentiality to another person respecting information relating to the transaction such that the director may not make the

disclosure described in 35-1-461(4)(b), disclosure is sufficient for purposes of subsection (1) if the director:

(a) discloses to the directors voting on the transaction the existence and nature of the conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors or on the committee constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either a conflicting interest respecting the transaction or a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

History: En. Sec. 110, Ch. 368, L. 1991.

35-1-464. Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of 35-1-462(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(a) notice to shareholders describing the director's conflicting interest transaction;

(b) provision of the information referred to in subsection (3); and

(c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (3) and (4), shareholders' action that otherwise complies with this section is not affected by the presence of holders of shares that are not qualified shares or the voting of those shares.

(3) For purposes of compliance with subsection (1), a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other office or agent of the corporation authorized to tabulate votes of the number of all shares and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned by or the voting of which is controlled by the director or by a related person of the director, or both.

(4) If a shareholders' vote does not comply with subsection (1) solely because of a failure of a director to comply with subsection (3) and if the director establishes that the failure did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting 35-1-462(2)(c), take action respecting the transaction and the director and give effect, if any, to the shareholders' vote as it considers appropriate in the circumstances.

(5) For purposes of this section, "qualified shares" means any shares entitled to be voted with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned by or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

History: En. Sec. 111, Ch. 368, L. 1991; amd. Sec. 1268, Ch. 56, L. 2009.

Part 5
Shareholders

35-1-501. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226; amd. Sec. 24, Ch. 475, L. 1981.

35-1-502. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.

35-1-503. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.

35-1-504. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.

35-1-505. Repealed. Sec. 216, Ch. 368, L. 1991.

History: (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231; amd. Sec. 25, Ch. 475, L. 1981.

35-1-507. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

35-1-508. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232; amd. Sec. 26, Ch. 475, L. 1981.

35-1-509. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 27, Ch. 475, L. 1981.

35-1-510. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.

35-1-511. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224; amd. Sec. 28, Ch. 475, L. 1981.

35-1-512. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-513. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.

35-1-514. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.

35-1-515. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 29, Ch. 475, L. 1981.

35-1-516. Annual meeting. (1) A corporation shall hold an annual meeting of shareholders at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(4) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in an annual meeting of the shareholders through a conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 49, Ch. 368, L. 1991.

35-1-517. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) on the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws; or

(b) if the holders of at least 10% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting that describe the purpose for which it is to be held.

(2) If the record date is not fixed or the manner of fixing the record date is not specified under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(4) Only business within the purpose described in the meeting notice required by 35-1-520 may be conducted at a special shareholders' meeting.

(5) If the corporation has 50 or fewer shareholders and if permitted by the bylaws, shareholders may participate in a special meeting of the shareholders by means of a conference telephone or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: En. Sec. 50, Ch. 368, L. 1991.

35-1-518. Court-ordered meeting. (1) The district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, in Lewis and Clark County may summarily order a meeting to be held:

(a) on application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

(b) on application of a shareholder who signed a demand for a special meeting valid under 35-1-517, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

History: En. Sec. 51, Ch. 368, L. 1991; amd. Sec. 23, Ch. 240, L. 2007.

35-1-519. Action without meeting. (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

(4) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation shall give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History: En. Sec. 52, Ch. 368, L. 1991.

35-1-520. Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting not less than 10 or more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under 35-1-518 or 35-1-522, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-1-522, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

History: En. Sec. 53, Ch. 368, L. 1991.

35-1-521. Waiver of notice. (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice unless the shareholder objects to considering the matter when it is presented.

History: En. Sec. 54, Ch. 368, L. 1991.

35-1-522. Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

History: En. Sec. 55, Ch. 368, L. 1991.

35-1-523. Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must:

(a) be arranged by voting group, and within each voting group by class or series of shares; and

(b) show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of 35-1-1107(3), to copy the list, during regular business hours and at that shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting or to copy the list as permitted by subsection (2), on application of the shareholder, the district court of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County may summarily order the inspection or copying at the corporation's

expense and may provide recovery to a shareholder for costs, including reasonable attorney fees, in bringing the action.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

History: En. Sec. 56, Ch. 368, L. 1991; amd. Sec. 24, Ch. 240, L. 2007.

35-1-524. Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

(5) Shares acquired by the corporation pursuant to 35-1-630 are not entitled to vote as long as they are owned by the corporation.

History: En. Sec. 57, Ch. 368, L. 1991.

Cross-References

Election of directors of railroad corporation, 69-14-501, 69-14-502.

Montana Uniform Transfers to Minors Act — powers of custodian, 72-26-701.

35-1-525. Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) (a) A shareholder may appoint a proxy to vote or otherwise act for that shareholder by:

(i) signing an appointment form, either personally or by attorney-in-fact; or

(ii) transmitting or authorizing the transmission of an appointment by telegram, cablegram, telephone, fax, e-mail, internet, or other means of electronic transmission, provided that the transmission contains sufficient information to demonstrate that the transmission was authorized by the shareholder.

(b) The secretary or other officer or agent that receives the transmission shall determine whether or not the transmission was authorized by the shareholder based on the information contained in the transmission.

(c) The signature provisions of 35-1-527 pertaining to proxies do not apply to transmissions that are determined to be authorized under the provisions of this subsection (2).

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form or transmission.

(4) Except as provided in subsection (6), an appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under 35-1-533.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to 35-1-526 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) A shareholder may not sell the shareholder's vote or issue a proxy to vote to any person for any sum of money or anything of value except as authorized in 35-1-532 and this section.

History: En. Sec. 58, Ch. 368, L. 1991; amd. Sec. 8, Ch. 229, L. 1999.

35-1-526. Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

(a) the type of nominee to which it applies;

(b) the rights or privileges that the corporation recognizes in a beneficial owner;

(c) the manner in which the procedure is selected by the nominee;

(d) the information that must be provided when the procedure is selected;

(e) the period for which selection of the procedure is effective; and

(f) other aspects of the rights and duties created.

History: En. Sec. 59, Ch. 368, L. 1991.

35-1-527. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) the name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accept or reject a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: **En. Sec. 60, Ch. 368, L. 1991.**

35-1-528. Quorum and voting requirements for voting groups. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is considered present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter other than the election of directors by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (2) or (3) is governed by 35-1-530.

(5) The election of directors is governed by 35-1-531.

History: **En. Sec. 61, Ch. 368, L. 1991.**

35-1-529. Action by single and multiple voting groups. (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in 35-1-527.

(2) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in 35-1-528. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

History: **En. Sec. 62, Ch. 368, L. 1991.**

35-1-530. Greater quorum or voting requirements. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or for voting groups of shareholders than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

History: **En. Sec. 63, Ch. 368, L. 1991.**

35-1-531. Voting for directors — cumulative voting. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Except as limited by subsection (3), at each election for directors each shareholder entitled to vote at the election has the right:

(a) to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote; or

(b) to cumulate the shareholder's votes:

(i) by giving one candidate as many votes as the number of directors to be elected multiplied by the number of shareholders' shares; or

(ii) by distributing the votes on the same principle among any number of the candidates.

(3) The right of all shareholders to cumulate their shares provided by subsection (2) may be denied by a statement to that effect included in the articles of incorporation, but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation are filed; or

(b) the statement is included in an amendment to the articles of incorporation unless the number of votes sufficient to elect one director, if voted upon a cumulative basis, was voted against the amendment.

History: En. Sec. 64, Ch. 368, L. 1991.

35-1-532. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and by transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3).

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for 10 years from the date the first shareholder signs the extension agreement. The voting trustee shall deliver copies of the extension agreement and the list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

(4) The counterpart of the voting trust agreement and the copy of the record deposited with the corporation is subject to the same right of examination by a shareholder of a corporation, in person or by agent or attorney, as are the books and records of the corporation, and the counterpart and the copy of the record are subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History: En. Sec. 65, Ch. 368, L. 1991.

35-1-533. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of 35-1-532.

(2) A voting agreement created under this section is specifically enforceable.

History: En. Sec. 66, Ch. 368, L. 1991.

35-1-534. Liability of shareholders. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in 35-1-623 or specified in the subscription agreement as provided in 35-1-622.

(2) Unless otherwise provided in the articles of incorporation, a shareholder who is:

(a) active in a corporation is not personally liable for the acts or debts of the corporation except that a shareholder may become personally liable by reason of that shareholder's own acts or conduct;

(b) not active in the corporation is not personally liable unless the corporate veil is pierced or the shareholder agrees in writing to assume personal liability.

History: En. Sec. 39, Ch. 368, L. 1991; amd. Sec. 1, Ch. 322, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 322 in (2) after "shareholder" substituted "who is" for "of"; in (2)(a) at beginning inserted "active in"; inserted (2)(b) regarding no personal liability for a shareholder who is not active; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Redemption by stockholder or corporation, 25-13-804.

Liability of directors in certain cases, 35-1-418.

35-1-535. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent provided in the articles of incorporation.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or similar words, means that all of the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them and to acquire proportional amounts of the corporation's issued shares acquired by the corporation pursuant to 35-1-630 upon the decision of the board of directors to convey them.

(b) A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) Shareholders of a corporation do not have a preemptive right to acquire proportional amounts of shares with respect to:

(i) shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(ii) shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates;

(iii) shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(iv) shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets do not have preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets do not have preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of 1 year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject to the shareholders' preemptive rights.

(g) Shares acquired by the corporation pursuant to 35-1-630 do not have preemptive rights as long as they are owned by the corporation.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 46, Ch. 368, L. 1991; amd. Sec. 1269, Ch. 56, L. 2009.

35-1-536 through 35-1-540 reserved.

35-1-541. Definitions. As used in 35-1-541 through 35-1-548, the following definitions apply:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in 35-1-548, in the right of a foreign corporation.

(2) "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

History: En. Sec. 67, Ch. 368, L. 1991.

35-1-542. Standing. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

History: En. Sec. 68, Ch. 368, L. 1991.

35-1-543. Demand. A shareholder may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action; and

(2) 90 days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

History: **En. Sec. 69, Ch. 368, L. 1991.**

35-1-544. Stay of proceedings. If the corporation begins an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period the court considers appropriate.

History: **En. Sec. 70, Ch. 368, L. 1991.**

35-1-545. Dismissal. (1) A derivative proceeding must be dismissed by the court on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is begun after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. If this is done, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: **En. Sec. 71, Ch. 368, L. 1991.**

35-1-546. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

History: **En. Sec. 72, Ch. 368, L. 1991.**

35-1-547. Payment of expenses. On termination of the derivative proceeding, the court may:

(1) order the corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) order the plaintiff to pay a defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) order a party to pay an opposing party's reasonable expenses, including attorney fees, incurred because of the filing of a pleading, motion, or other paper, if it finds that:

(a) the pleading, motion, or other paper was not well-grounded in fact, after reasonable inquiry; or

(b) the filing was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass, to cause unnecessary delay, or to cause a needless increase in the cost of litigation.

History: En. Sec. 73, Ch. 368, L. 1991.

35-1-548. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matters covered by 35-1-541 through 35-1-548 are governed by the laws of the jurisdiction of incorporation of the foreign corporation except for 35-1-544, 35-1-546, and 35-1-547.

History: En. Sec. 74, Ch. 368, L. 1991.

35-1-549 reserved.

35-1-550. Number of shareholders. (1) For purposes of Title 35, chapter 9, the following, identified as a shareholder in a corporation's current record of shareholders, constitutes one shareholder:

(a) three or fewer co-owners;

(b) a corporation, partnership, trust, estate, or other entity; or

(c) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(2) For purposes of Title 35, chapter 9, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

History: En. Sec. 180, Ch. 368, L. 1991.

Part 6
Shares

Part Cross-References

U.C.C. — investment securities, Title 30, ch. 8.
Securities Act of Montana, Title 30, ch. 10.
Shares of cooperative associations, Title 35, ch. 15, part 4.
Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.
Stock of cooperative agricultural marketing associations, 35-17-302.
Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-1-601. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214; amd. Sec. 30, Ch. 475, L. 1981.

35-1-602. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215; amd. Sec. 31, Ch. 475, L. 1981; amd. Sec. 18, Ch. 131, L. 1983; amd. Sec. 15, Ch. 174, L. 1983.

35-1-603. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

35-1-605. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217; amd. Sec. 32, Ch. 475, L. 1981.

35-1-606. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 33, Ch. 475, L. 1981.

35-1-607. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 34, Ch. 475, L. 1981.

35-1-608. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221; amd. Sec. 35, Ch. 475, L. 1981.

35-1-611. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222; amd. Sec. 36, Ch. 475, L. 1981.

35-1-612. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205; amd. Sec. 37, Ch. 475, L. 1981; amd. Sec. 19, Ch. 131, L. 1983; amd. Sec. 16, Ch. 174, L. 1983.

35-1-613. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-614. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.

35-1-615. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.

35-1-616. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.

35-1-617. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 38, Ch. 475, L. 1981.

35-1-618. Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class. Prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class, except to the extent otherwise permitted by 35-1-619.

(2) (a) The articles of incorporation must authorize:

(i) one or more classes of shares that together have unlimited voting rights; and

(ii) one or more classes of shares which may be the same class or classes as those with voting rights.

(b) The classes of shares listed in subsections (2)(a)(i) and (2)(a)(ii), taken together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by this chapter;

(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for cash, indebtedness, securities, or other property; and

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; and

(d) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) is not exhaustive.

(5) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on terms and conditions that may be provided by resolutions of the board of directors.

History: En. Sec. 33, Ch. 368, L. 1991.

35-1-619. Terms of class or series determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in 35-1-618, of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, to those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state, for filing, articles of amendment that are effective without shareholder action and that set forth:

(a) the name of the corporation;

(b) the text of the amendment determining the terms of the class or series of shares;

(c) the date the amendment was adopted; and

(d) a statement that the amendment was duly adopted by the board of directors.

History: En. Sec. 34, Ch. 368, L. 1991.

35-1-620. Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Subject to 35-1-630, shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to 35-1-712 and to the limitations of subsection (3) of this section.

(3) Whenever shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

History: En. Sec. 35, Ch. 368, L. 1991.

35-1-621. Fractional shares. (1) A corporation may:

(a) issue fractions of a share or pay in money the value of fractions of a share;

(b) arrange for disposition of fractional shares by the shareholders; and

(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by 35-1-626.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including the condition:

(a) that the scrip will become void if not exchanged for full shares before a specified date; and

(b) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

History: En. Sec. 36, Ch. 368, L. 1991.

35-1-622. Subscription for shares before incorporation. (1) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or unless all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform, so far as practicable, as to all shares of the same class or series unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed in the same manner as it would collect any other debt. Alternatively, unless the subscription

agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation and is subject to the provisions of 35-1-623.

History: En. Sec. 37, Ch. 368, L. 1991.

35-1-623. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive with regard to the adequacy of consideration for the issuance of shares relating to whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for the consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or the corporation may also make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

History: En. Sec. 38, Ch. 368, L. 1991.

35-1-624. Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) the articles of incorporation authorize the issuance;

(b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) there are no outstanding shares of the class or series to be issued.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

History: En. Sec. 40, Ch. 368, L. 1991.

35-1-625. Share options. A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

History: En. Sec. 41, Ch. 368, L. 1991.

35-1-626. Form and content of certificates. (1) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provide otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) the name of the issuing corporation and that it is organized under the law of this state;

(b) the name of the person to whom issued; and

(c) the number and class of shares and the designation of the series, if any, that the certificate represents.

(3) (a) If the issuing corporation is authorized to issue different classes of shares or different series within a class the following must be summarized on the front or back of each certificate:

(i) the designations, relative rights, preferences, and limitations applicable to each class;

(ii) the variations in rights, preferences, and limitations determined for each series; and

(iii) the authority of the board of directors to determine variations for future series.

(b) Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate remains valid.

History: En. Sec. 42, Ch. 368, L. 1991.

Cross-References

Fraud as constituting theft, 45-6-301.

35-1-627. Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by 35-1-626 and, if applicable, subsection (1) of this section.

History: En. Sec. 43, Ch. 368, L. 1991.

35-1-628. Restriction on transfer or registration of transfer of shares and other securities. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or have voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by 35-1-627. Unless noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) to maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) to preserve exemptions under federal or state securities law;

(c) to preserve an election under the Internal Revenue Code; or

(d) for any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) obligate the shareholder first to offer the corporation or other person, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) obligate the corporation or other person, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

History: En. Sec. 44, Ch. 368, L. 1991.

35-1-629. Expense of issue. A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

History: En. Sec. 45, Ch. 368, L. 1991.

35-1-630. Corporation's acquisition of its own shares. (1) Except as provided in subsection (2), a corporation may acquire its own shares, and those shares constitute authorized but unissued shares.

(2) If provided by the corporation's articles of incorporation or bylaws, shares acquired pursuant to subsection (1) constitute authorized and issued shares. A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares acquired under this subsection, in which case the shares constitute authorized but unissued shares.

(3) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective on amendment of the articles of incorporation.

(4) Articles of amendment may be adopted by the board of directors without shareholder action, must be delivered to the secretary of state, for filing, and must set forth:

(a) the name of the corporation;

(b) the reduction in the number of authorized shares, itemized by class and series; and

(c) the total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

History: En. Sec. 47, Ch. 368, L. 1991.

Cross-References

Merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

Part 7
Distributions

35-1-701. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-702. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-703. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.

35-1-704. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.

35-1-705. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

35-1-706 through 35-1-710 reserved.

35-1-711. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 39, Ch. 475, L. 1981.

35-1-712. Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders, subject to restriction by the articles of incorporation and the limitation in subsection (3).

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than a distribution involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

(3) A distribution may not be made if, after giving it effect:

(a) the corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) the corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) The effect of a distribution under subsection (1) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(i) the date money or other property is transferred or debt incurred by the corporation; or

(ii) the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; or

(c) in all other cases, as of:

(i) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(ii) the date the payment is made if it occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

History: En. Sec. 48, Ch. 368, L. 1991.

35-1-713. Liability for unlawful distributions. (1) Unless the director complies with the applicable standards of conduct described in 35-1-418, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-1-418; and

(b) from each shareholder for the amount the shareholder accepted if the shareholder knows the distribution was made in violation of this chapter or the articles of incorporation.

History: En. Sec. 93, Ch. 368, L. 1991.

Part 8
Merger, Consolidation, Share Exchange, and Sale of Assets

35-1-801. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979; amd. Sec. 40, Ch. 475, L. 1981.

35-1-802. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.

35-1-803. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267; amd. Sec. 41, Ch. 475, L. 1981.

35-1-804. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 42, Ch. 475, L. 1981; amd. Sec. 20, Ch. 131, L. 1983; amd. Sec. 17, Ch. 174, L. 1983.

35-1-805. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 43, Ch. 475, L. 1981; amd. Sec. 21, Ch. 131, L. 1983; amd. Sec. 18, Ch. 174, L. 1983.

35-1-806. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269; amd. Sec. 44, Ch. 435, L. 1981.

35-1-807. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270; amd. Sec. 45, Ch. 475, L. 1981.

35-1-808. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271; amd. Sec. 46, Ch. 475, L. 1981.

35-1-809. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272; amd. Sec. 47, Ch. 475, L. 1981.

35-1-810. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273; amd. Sec. 48, Ch. 475, L. 1981.

35-1-811. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.

35-1-812. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 49, Ch. 475, L. 1981.

35-1-813. Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve a plan of merger.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) the terms and conditions of the merger; and

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) amendments to the articles of incorporation of the surviving corporation; and

(b) other provisions relating to the merger.

History: En. Sec. 124, Ch. 368, L. 1991.

Cross-References

Merger of limited liability company, 35-8-1201.

35-1-814. Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by 35-1-815, approve the exchange.

(2) The plan of exchange must set forth:

(a) the name of the corporation from which shares will be acquired and the name of the acquiring corporation;

(b) the terms and conditions of the exchange; and

(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth any other provision relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

History: En. Sec. 125, Ch. 368, L. 1991.

35-1-815. Action on plan. (1) Except as provided in subsection (7), after adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger and the board of directors of the corporation whose shares will be acquired in the share exchange shall submit the plan of merger, except as provided in subsection (7), or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors shall recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote shall approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the

purpose or one of the purposes of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, or the board of directors, acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by an affirmative vote of two-thirds, or a majority vote if authorized by subsection (10), of the votes entitled to be cast on the plan by that voting group.

(6) Separate voting by voting groups is required:

(a) on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under 35-1-228; and

(b) on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in 35-1-226, from its articles before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in subsection (7):

(a) "participating shares" means shares that entitle their shareholders to participate without limitation in distributions; and

(b) "voting shares" means shares that entitle their shareholders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action in accordance with the procedure set forth in the plan of merger or share exchange or, if no procedure is set forth, in the manner determined by the board of directors.

(10) A majority of all votes entitled to be cast by each voting group is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 126, Ch. 368, L. 1991.

Cross-References

Appeal from Secretary of State's refusal to file articles of merger or consolidation, 35-1-1310.

35-1-816. Articles of merger or share exchange. (1) After a plan of merger or share exchange is approved by the shareholders or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger or share exchange setting forth:

(a) the plan of merger or share exchange; and

(b) if shareholder approval was not required, a statement to that effect; or

(c) if approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(i) the designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(ii) either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

(2) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

History: En. Sec. 128, Ch. 368, L. 1991.

35-1-817. Effect of merger or share exchange. (1) When a merger takes effect:

(a) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) the surviving corporation has all liabilities of each corporation party to the merger;

(d) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) the articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) the shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted and the former shareholders are entitled only to the rights provided in the articles of merger or to their rights under 35-1-826 through 35-1-839.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan and the former shareholders are entitled only to the exchange rights provided in the articles of share exchange or to their rights under 35-1-826 through 35-1-839.

History: En. Sec. 129, Ch. 368, L. 1991.

35-1-818. Merger of subsidiary. (1) A parent corporation owning at least 80% of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent corporation or subsidiary.

(2) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(a) the names of the parent corporation and subsidiary; and

(b) the manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent corporation or any other corporation or into cash or other property in whole or part.

(3) The parent corporation shall mail a copy of the summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

(4) The parent corporation may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

(5) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation except for amendments enumerated in 35-1-226.

History: En. Sec. 127, Ch. 368, L. 1991.

35-1-819. Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) in a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) in a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) the foreign corporation complies with 35-1-816 and if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) each domestic corporation complies with the applicable provisions of 35-1-813 through 35-1-815 and 35-1-818 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with the provisions of 35-1-816.

(2) When the merger or share exchange takes effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is considered:

(a) to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) to have agreed that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under 35-1-826 through 35-1-839.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

History: En. Sec. 130, Ch. 368, L. 1991.

Cross-References

Service of process on Secretary of State, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Authority of foreign corporation to transact business, 35-1-1026.

Appeal from Secretary of State's refusal to file articles of merger, 35-1-1310.

35-1-820. Shareholder agreements. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions, whether or not in proportion to ownership of shares, subject to the limitations in 35-1-712;

(c) establishes who must be directors or officers of the corporation or their terms of office or manner of selection or removal;

(d) governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation or among any of them and is not contrary to public policy.

(2) An agreement authorized by this section must be:

(a) set forth:

(i) in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) in a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is made known to the corporation;

(b) subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) valid for 10 years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by 35-1-627(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement may not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement must be entitled to rescission of the purchase. A purchaser is considered to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section must cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors must relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section may not be a ground for imposing personal liability on any shareholders for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares have not been issued when the agreement is made.

History: En. Sec. 1, Ch. 268, L. 1997.

35-1-821 reserved.

35-1-822. Sale of assets in regular course of business — mortgage of assets. (1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of business;

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) transfer any or all of its property to another corporation all the shares of which are owned by the corporation.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.

History: En. Sec. 131, Ch. 368, L. 1991.

Cross-References

Activities not to be considered transacting business, 35-1-1026.

35-1-823. Sale of assets other than in regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction under this section to be authorized:

(a) the board of directors shall recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote shall approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all the property of the corporation and must contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (8), of the votes entitled to be cast on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholders' action.

(7) A transaction that constitutes a distribution is governed by 35-1-712 and not by this section.

(8) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 132, Ch. 368, L. 1991.

35-1-824 and 35-1-825 reserved.

35-1-826. Definitions. As used in 35-1-826 through 35-1-839, the following definitions apply:

(1) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(2) "Corporation" includes the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(3) "Dissenter" means a shareholder who is entitled to dissent from corporate action under 35-1-827 and who exercises that right when and in the manner required by 35-1-829 through 35-1-837.

(4) "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(5) "Interest" means interest from the effective date of the corporate action until the date of payment at the average rate currently paid by the corporation on its principal bank loans or, if the corporation has no loans, at a rate that is fair and equitable under all the circumstances.

(6) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial shareholder to the extent of the rights granted by a nominee certificate on file with a corporation.

(7) "Shareholder" means the record shareholder or the beneficial shareholder.

History: En. Sec. 133, Ch. 368, L. 1991.

35-1-827. Right to dissent. (1) A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by 35-1-815 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) the corporation is a subsidiary that is merged with its parent corporation under 35-1-818;

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the plan;

(c) consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision with respect to a sinking fund for the redemption or repurchase of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to be voted on any matter or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share created is to be acquired for cash under 35-1-621; or

(e) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and to obtain payment for their shares.

(2) A shareholder entitled to dissent and to obtain payment for shares under 35-1-826 through 35-1-839 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

History: En. Sec. 134, Ch. 368, L. 1991; amd. Sec. 2, Ch. 249, L. 1993.

35-1-828. Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if the beneficial shareholder:

(a) submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) does so with respect to all shares of which the beneficial shareholder is the beneficial shareholder or over which the beneficial shareholder has power to direct the vote.

History: En. Sec. 135, Ch. 368, L. 1991; amd. Sec. 1270, Ch. 56, L. 2009.

35-1-829. Notice of dissenters' rights. (1) If a proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under 35-1-826 through 35-1-839 and must be accompanied by a copy of 35-1-826 through 35-1-839.

(2) If a corporate action creating dissenters' rights under 35-1-827 is taken without a vote of shareholders, the corporation shall give written notification to all shareholders entitled to assert dissenters' rights that the action was taken and shall send them the dissenters' notice described in 35-1-831.

History: En. Sec. 136, Ch. 368, L. 1991.

35-1-830. Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) shall deliver to the corporation before the vote is taken written notice of the intent to demand payment for the shareholder's shares if the proposed action is effectuated; and

(b) may not vote the shareholder's shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1)(a) is not entitled to payment for the shareholder's shares under 35-1-826 through 35-1-839.

History: En. Sec. 137, Ch. 368, L. 1991; amd. Sec. 1271, Ch. 56, L. 2009.

35-1-831. Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under 35-1-827 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of 35-1-830.

(2) The dissenters' notice must be sent no later than 10 days after the corporate action was taken and must:

(a) state where the payment demand must be sent and where and when certificates for certified shares must be deposited;

(b) inform shareholders of uncertificated shares to what extent transfer of the shares will be restricted after the payment is received;

(c) supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the person asserting dissenters' rights to certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) set a date by which the corporation must receive the payment demand, which may not be fewer than 30 nor more than 60 days after the date the required notice under subsection (1) is delivered; and

(e) be accompanied by a copy of 35-1-826 through 35-1-839.

History: En. Sec. 138, Ch. 368, L. 1991; amd. Sec. 1272, Ch. 56, L. 2009.

35-1-832. Duty to demand payment. (1) A shareholder sent a dissenters' notice described in 35-1-831 shall demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to 35-1-831(2)(c), and deposit the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's certificates under subsection (1) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(3) A shareholder who does not demand payment or deposit the shareholder's certificates when required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under 35-1-826 through 35-1-839.

History: En. Sec. 139, Ch. 368, L. 1991; amd. Sec. 1273, Ch. 56, L. 2009.

35-1-833. Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions are released under 35-1-835.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

History: En. Sec. 140, Ch. 368, L. 1991.

35-1-834. Payment. (1) Except as provided in 35-1-836, as soon as the proposed corporate action is taken or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with 35-1-832 the amount the corporation estimates to be the fair value of the dissenter's shares plus accrued interest.

(2) The payment must be accompanied by:

(a) the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) a statement of the corporation's estimate of the fair value of the shares;

(c) an explanation of how the interest was calculated;

(d) a statement of the dissenter's right to demand payment under 35-1-837; and

(e) a copy of 35-1-826 through 35-1-839.

History: En. Sec. 141, Ch. 368, L. 1991.

35-1-835. Failure to take action. (1) If the corporation does not take the proposed action within 60 days after the date set for demanding payment and depositing certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it shall send a new dissenters' notice under 35-1-831 and repeat the payment demand procedure.

History: En. Sec. 142, Ch. 368, L. 1991.

35-1-836. After-acquired shares. (1) A corporation may elect to withhold payment required by 35-1-834 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1), after taking the proposed corporate action, the corporation shall estimate the fair value of the shares plus accrued interest and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under 35-1-837.

History: En. Sec. 143, Ch. 368, L. 1991; amd. Sec. 1274, Ch. 56, L. 2009.

35-1-837. Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and the amount of interest due and may demand payment of the dissenter's estimate, less any payment under 35-1-834, or reject the corporation's offer under 35-1-836 and demand payment of the fair value of the dissenter's shares and the interest due if:

(a) the dissenter believes that the amount paid under 35-1-834 or offered under 35-1-836 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) the corporation fails to make payment under 35-1-834 within 60 days after the date set for demanding payment; or

(c) the corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the demand in writing under subsection (1) within 30 days after the corporation made or offered payment for the dissenter's shares.

History: En. Sec. 144, Ch. 368, L. 1991; amd. Sec. 1275, Ch. 56, L. 2009.

35-1-838. Court action. (1) If a demand for payment under 35-1-837 remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and shall petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office is located or, if its principal office is not located in this state, in Lewis and Clark County. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation

merged with or whose shares were acquired by the foreign corporation was located or, if the domestic corporation did not have its principal office in the state at the time of the transaction, in Lewis and Clark County.

(3) The corporation shall make all dissenters whose demands remain unsettled, whether or not residents of this state, parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by certified mail or by publication as provided by law.

(4) The jurisdiction of the district court in which the proceeding is commenced under subsection (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding is entitled to judgment:

(a) for the amount, if any, by which the court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation; or

(b) for the fair value plus accrued interest of the dissenter's after-acquired shares for which the corporation elected to withhold payment under 35-1-836.

History: En. Sec. 145, Ch. 368, L. 1991; amd. Sec. 25, Ch. 240, L. 2007.

35-1-839. Court costs and attorney fees. (1) The court in an appraisal proceeding commenced under 35-1-838 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under 35-1-837.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of 35-1-829 through 35-1-837; or

(b) against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by 35-1-826 through 35-1-839.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and that the fees for those services should not be assessed against the corporation, the court may award the counsel reasonable attorney fees to be paid out of the amounts awarded the dissenters who were benefited.

History: En. Sec. 146, Ch. 368, L. 1991.

Part 9
Dissolution and Liquidation

Part Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Limited liability company dissolution, Title 35, ch. 8, part 9.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-1-901. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275; amd. Sec. 50, Ch. 475, L. 1981; amd. Sec. 22, Ch. 131, L. 1983; amd. Sec. 19, Ch. 174, L. 1983.

35-1-902. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276; amd. Sec. 23, Ch. 131, L. 1983; amd. Sec. 20, Ch. 174, L. 1983.

35-1-903. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277; amd. Sec. 24, Ch. 131, L. 1983; amd. Sec. 21, Ch. 174, L. 1983.

35-1-904. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278; amd. Sec. 25, Ch. 131, L. 1983.

35-1-905. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.

35-1-906. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.

35-1-907. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281; amd. Sec. 26, Ch. 131, L. 1983; amd. Sec. 22, Ch. 174, L. 1983.

35-1-908. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282; amd. Sec. 27, Ch. 131, L. 1983; amd. Sec. 23, Ch. 174, L. 1983.

35-1-909. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283; amd. Sec. 28, Ch. 131, L. 1983.

35-1-910. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 29, Ch. 131, L. 1983; amd. Sec. 24, Ch. 174, L. 1983; amd. Sec. 4, Ch. 445, L. 1985.

35-1-912. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286; amd. Sec. 30, Ch. 131, L. 1983.

35-1-913 through 35-1-920 reserved.

35-1-921. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

35-1-922. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.

35-1-923. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.

35-1-924. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

35-1-925. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

35-1-926. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

35-1-927. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

35-1-928. Renumbered 35-1-944. Sec. 221, Ch. 368, L. 1991.

35-1-929. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.

35-1-930. Repealed. Sec. 216, Ch. 368, L. 1991.
History: En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.

35-1-931. Dissolution by incorporators or initial directors. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4) that any debt of the corporation does not remain unpaid;

(5) if shares were issued, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6) that a majority of the incorporators or initial directors authorized the dissolution.

History: En. Sec. 147, Ch. 368, L. 1991; amd. Sec. 9, Ch. 229, L. 1999.

Cross-References

Appeal from Secretary of State's refusal to file articles of dissolution, 35-1-1310.

35-1-932. Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) the board of directors shall recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (5).

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with 35-1-520. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), requires a greater vote or a vote by voting groups to be adopted, the proposal to dissolve must be approved by an affirmative vote of two-thirds, or a majority if authorized by subsection (6), of all the votes entitled to be cast on that proposal.

(6) A majority of votes cast by the shareholders is sufficient to constitute approval by the corporation if a statement to that effect is included in the articles of incorporation but only if:

(a) the statement is included in the articles of incorporation at the time the initial articles of incorporation were filed; or

(b) the statement is included in an amendment to the articles of incorporation approved by an affirmative vote of two-thirds of the votes entitled to be cast on the amendment pursuant to 35-1-227.

History: En. Sec. 148, Ch. 368, L. 1991.

Cross-References

Shareholders' right to dissent, 35-1-827.

35-1-933. Articles of dissolution. (1) (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

(i) the name of the corporation;

(ii) the date dissolution was authorized;

(iii) if the dissolution was adopted by the board of directors without shareholder action, a statement to the effect that shareholder action was not required; and

(iv) if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(b) If voting by voting groups is required, the information required by subsection (1)(a)(iv) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 149, Ch. 368, L. 1991; amd. Sec. 154, Ch. 42, L. 1997; amd. Sec. 10, Ch. 229, L. 1999.

35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors

alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933(1)(a)(iv) or (1)(b).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

History: En. Sec. 150, Ch. 368, L. 1991; amd. Sec. 155, Ch. 42, L. 1997; amd. Sec. 11, Ch. 229, L. 1999.

35-1-935. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in part 4;

(d) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;

(g) terminate the authority of the registered agent of the corporation; or

(h) discharge, abate, or forgive any tax liability of the corporation.

History: En. Sec. 151, Ch. 368, L. 1991; amd. Sec. 3, Ch. 69, L. 1999.

Cross-References

Cancellation of assumed name upon dissolution — withdrawal of foreign corporation's authority to transact business, 30-13-214.

35-1-936. Known claims against dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (1) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

History: En. Sec. 152, Ch. 368, L. 1991.

35-1-937. Unknown claims against dissolved corporation. (1) Subject to 35-1-936, the dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or shareholders for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers have power to take corporate or other action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under 35-1-936 or this section:

(a) against the dissolved corporation, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

(3) Subsections (1) and (2) apply to foreign corporations and their shareholders transacting business in this state for any claims otherwise arising or accruing under Montana law.

History: En. Sec. 153, Ch. 368, L. 1991; amd. Sec. 3, Ch. 249, L. 1993.

35-1-938. Grounds for judicial dissolution. The district court may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(a) the corporation obtained its articles of incorporation through fraud; or

(b) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(d) the corporate assets are being misapplied or wasted;

(3) in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

History: En. Sec. 154, Ch. 368, L. 1991.

Cross-References

Appointment of receivers upon dissolution of corporation, 27-20-103.
Quo warranto proceedings, Title 27, ch. 28.
Judgment dissolving corporation, 27-28-502.

Vacating, annulling, or suspending corporate charter for unfair trade practices, 30-14-134.
Defense of ultra vires, 35-1-117.
Derivative proceeding — payment of expenses, 35-1-547.
Involuntary dissolution — procedure, 35-6-104.

35-1-939. Discretion of court to grant relief other than dissolution. (1) In any action filed by a shareholder or director to dissolve the corporation on the grounds enumerated in 35-1-938, the court may make any order to grant the relief other than dissolution as, in its discretion, it considers appropriate, including, without limitation, an order:

(a) canceling or altering any provision contained in the articles of incorporation, in any amendment of the articles of incorporation, or in the bylaws of the corporation;

(b) canceling, altering, or enjoining any resolution or other act of the corporation;

(c) directing or prohibiting any act of the corporation or of shareholders, directors, officers, or other persons party to the action; or

(d) providing for the purchase at fair value of shares of any shareholder, either by the corporation or by other shareholders.

(2) Relief under subsection (1) may be granted as an alternative to a decree of dissolution or may be granted whenever, under the circumstances of the case, relief but not dissolution would be appropriate.

History: En. Sec. 155, Ch. 368, L. 1991.

35-1-940. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general or any other party named in 35-1-938 to dissolve a corporation lies in the county where a corporation's principal office is or was located or, if its principal office is not located in this state, in Lewis and Clark County.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

History: En. Sec. 156, Ch. 368, L. 1991; amd. Sec. 26, Ch. 240, L. 2007.

Cross-References

Receivers, Title 27, ch. 20.
Quo warranto proceedings, Title 27, ch. 28.
Suretyship, Title 28, ch. 11, part 4.

35-1-941. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) the custodian may exercise all of the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or

custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

History: **En. Sec. 157, Ch. 368, L. 1991; amd. Sec. 1276, Ch. 56, L. 2009.**

35-1-942. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-1-938 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with 35-1-935 and the notification of claimants in accordance with 35-1-936 and 35-1-937.

History: **En. Sec. 158, Ch. 368, L. 1991.**

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto proceedings, Title 27, ch. 28.

35-1-943. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them must be reduced to cash and deposited with the state treasurer or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay the creditor, claimant, or shareholder or the creditor's, claimant's, or shareholder's representative that amount.

History: **En. Sec. 159, Ch. 368, L. 1991; amd. Sec. 1277, Ch. 56, L. 2009.**

35-1-944. State dissolution or withdrawal certificate. A decree of voluntary dissolution may not be made and entered by a court, nor shall the clerk of the district court of a county or secretary of state file a voluntary dissolution decree or file any other document by which the term of existence of a corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state. The secretary of state may not file an application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with the court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a dissolution or withdrawal certificate issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal. The issuance of the dissolution or withdrawal certificate or tax clearance certificate does not relieve the corporation from liability for taxes, penalties, or interest due the state of Montana including taxes, penalties, or interest incurred after the date of dissolution.

History: **En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979; amd. Sec. 152, Ch. 575, L. 1981; amd. Sec. 5, Ch. 445, L. 1985; Sec. 35-1-928, MCA 1989; redes. 35-1-944 by Sec. 221, Ch. 368, L. 1991; amd. Sec. 4, Ch. 69, L. 1999.**

Cross-References

Withdrawal of foreign corporation, 35-1-1037.

Part 10
Foreign Corporations

35-1-1001. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).**

35-1-1002. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2); amd. Sec. 51, Ch. 475, L. 1981.**

35-1-1003. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.**

35-1-1004. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117; amd. Sec. 1, Ch. 583, L. 1983.**

35-1-1005. Repealed. Sec. 216, Ch. 368, L. 1991.

History: **En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.**

35-1-1006. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101; amd. Sec. 52, Ch. 475, L. 1981; amd. Sec. 4, Ch. 456, L. 1983.

35-1-1007. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102; amd. Sec. 53, Ch. 475, L. 1981.

35-1-1008. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103; amd. Sec. 54, Ch. 475, L. 1981; amd. Sec. 31, Ch. 131, L. 1983; amd. Sec. 25, Ch. 174, L. 1983.

35-1-1009. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104; amd. Sec. 55, Ch. 475, L. 1981; amd. Sec. 32, Ch. 131, L. 1983.

35-1-1010. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

35-1-1011. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111; amd. Sec. 33, Ch. 131, L. 1983.

35-1-1012. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

35-1-1013. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107; amd. Sec. 34, Ch. 131, L. 1983; amd. Sec. 26, Ch. 174, L. 1983.

35-1-1014. Renumbered 35-1-1034. Sec. 221, Ch. 368, L. 1991.

35-1-1015. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109; amd. Sec. 56, Ch. 475, L. 1981.

35-1-1016. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.

35-1-1017. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979; amd. Sec. 57, Ch. 475, L. 1981; amd. Sec. 27, Ch. 174, L. 1983.

35-1-1018. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113; amd. Sec. 35, Ch. 131, L. 1983.

35-1-1019. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.

35-1-1020. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115; amd. Sec. 5, Ch. 456, L. 1983.

35-1-1021 through 35-1-1024 reserved.

35-1-1025. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 4, Ch. 273, L. 1989.

35-1-1026. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and shall apply for and must receive a certificate of authority to transact business before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign corporation obtain a certificate of authority. The foreign corporation must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state.

History: En. Sec. 160, Ch. 368, L. 1991; amd. Sec. 1, Ch. 363, L. 1999.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.
Securities Act of Montana, Title 30, ch. 10.
Classification of business trusts as foreign, 35-5-102.

35-1-1027. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day but not to exceed a total of $1,000 for each year that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to obtain a certificate of authority, as required under 35-1-1026, is voidable by the state, the contracting state agency, or the contracting political subdivision.

History: En. Sec. 161, Ch. 368, L. 1991; amd. Sec. 2, Ch. 363, L. 1999.

35-1-1028. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-1-1031;

(b) the name of the state or country under whose law it is incorporated;

(c) its date of incorporation and period of duration;

(d) the business mailing address of its principal office;

(e) the information required by 35-7-105(1);

(f) the names and usual business addresses of its current directors and officers; and

(g) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: En. Sec. 162, Ch. 368, L. 1991; amd. Sec. 27, Ch. 240, L. 2007; amd. Sec. 9, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) substituted "business mailing address" for "street address". Amendment effective October 1, 2011.

35-1-1029. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if the corporation changes:

(a) its corporate name;

(b) the period of its duration;

(c) any of the information required by 35-7-105(1);

(d) the state or country of its incorporation; or

(e) other corporate information that is recorded in its state or country of incorporation but not listed in subsections (1)(a) through (1)(d).

(2) The requirements of 35-1-1028 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 163, Ch. 368, L. 1991; amd. Sec. 28, Ch. 240, L. 2007; amd. Sec. 10, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 inserted (1)(e) related to other corporate information; and made minor changes in style. Amendment effective October 1, 2011.

35-1-1030. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as a domestic corporation of similar character and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 164, Ch. 368, L. 1991.

Cross-References

Appeal from Secretary of State's refusal to file articles of incorporation, 35-1-1310.

35-1-1031. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state, the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, signed by an officer of the board or the corporate presiding officer, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029.

History: En. Sec. 165, Ch. 368, L. 1991; amd. Sec. 84, Ch. 120, L. 1993; amd. Sec. 8, Ch. 75, L. 2003.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Registration of assumed business name by foreign corporation or foreign limited partnership — when prohibited, 30-13-205.

Trademarks and service marks, Title 30, ch. 13, part 3.

Business corporation — corporate name, Title 35, ch. 1, part 3.

Nonprofit corporation — corporate name, 35-2-305.

Foreign nonprofit corporation — corporate name, 35-2-826.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-1-1032. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 166, Ch. 368, L. 1991; amd. Sec. 12, Ch. 229, L. 1999.

35-1-1033. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 167, Ch. 368, L. 1991.

35-1-1034. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108; Sec. 35-1-1014, MCA 1989; redes. 35-1-1034 by Sec. 221, Ch. 368, L. 1991.

35-1-1035 reserved.

35-1-1036. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 168, Ch. 368, L. 1991.

35-1-1037. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign corporation as prescribed by 35-1-1026 through 35-1-1031, 35-1-1038 through 35-1-1040, and this section.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (2).

History: En. Sec. 169, Ch. 368, L. 1991; amd. Sec. 29, Ch. 240, L. 2007.

Cross-References

Tax clearance certificate required for withdrawal from state, 35-1-944.

35-1-1038. Grounds for revocation. The secretary of state may commence a proceeding under 35-1-1039 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) the foreign corporation does not deliver its annual report to the secretary of state within 90 days after it is due;

(2) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(3) the foreign corporation is without a registered agent in this state for 90 days or more;

(4) the foreign corporation does not inform the secretary of state by an appropriate filing that its registered agent has changed or resigned within 60 days of the change or resignation;

(5) an incorporator, director, officer, or agent of the foreign corporation signed a document the person knew was false in any material respect with the intent that the document be delivered to the secretary of state for filing; or

(6) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

History: En. Sec. 170, Ch. 368, L. 1991; amd. Sec. 30, Ch. 240, L. 2007.

Cross-References

Revoking authority of foreign corporation to transact business for unfair trade practices, 30-14-134.

35-1-1039. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall mail to the foreign corporation the written notice of the determination.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after the notice is mailed, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The

secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if a report or communication is not on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 171, Ch. 368, L. 1991; amd. Sec. 4, Ch. 249, L. 1993.

35-1-1040. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 172, Ch. 368, L. 1991; amd. Sec. 31, Ch. 240, L. 2007.

Part 11
Annual Report — Corporate Records

35-1-1101. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979; amd. Sec. 58, Ch. 475, L. 1981; amd. Sec. 28, Ch. 174, L. 1983; amd. Sec. 1, Ch. 153, L. 1989.

35-1-1102. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.

35-1-1103. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.

35-1-1104. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report, executed as provided in 35-1-217, that sets forth:

(a) the name of the corporation and the jurisdiction under whose law it is incorporated;

(b) the information required by 35-7-105(1);

(c) the business mailing address of its principal office, wherever located;

(d) the names and business mailing addresses of its principal officers, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead; and

(e) the names and business mailing addresses of its directors, except that in the case of a corporation that has eliminated its board of directors pursuant to 35-1-820, the annual report must set forth the names of shareholders instead.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing

and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 179, Ch. 368, L. 1991; amd. Sec. 1, Ch. 139, L. 1997; amd. Sec. 4, Ch. 33, L. 2007; amd. Sec. 32, Ch. 240, L. 2007; amd. Sec. 11, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(c) before "address" inserted "business mailing"; and in (1)(d) and (1)(e) after "names" inserted "and business mailing addresses". Amendment effective October 1, 2011.

Cross-References

Filing fees, 35-1-1206.
Grounds for involuntary dissolution — failure to file, 35-6-102.
False financial statements — theft — deceptive practices, 45-6-301, 45-6-317.

35-1-1105 reserved.

35-1-1106. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations if shares issued pursuant to those resolutions are outstanding;

(d) the minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;

(e) the financial statements available to shareholders for the past 3 years under 35-1-1110;

(f) a list of the names and business addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-1-1104.

History: En. Sec. 173, Ch. 368, L. 1991.

35-1-1107. Inspection of records by shareholders. (1) Subject to 35-1-1108(3), a shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in 35-1-1106(5) if the shareholder gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) and gives the corporation written notice of the demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

(a) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) the record of shareholders.

(3) A shareholder may inspect and copy the records identified in subsection (2) only if:

(a) the demand is made in good faith and for a proper purpose;

(b) the shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect;

(c) the records are directly connected with the shareholder's purpose; and

(d) the shareholder has been a shareholder of record for at least 6 months preceding the demand or the shareholder is a holder of record of at least 5% of all the outstanding shares of the corporation.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) the right of a shareholder to inspect records under 35-1-523 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

History: En. Sec. 174, Ch. 368, L. 1991; amd. Sec. 156, Ch. 42, L. 1997.

35-1-1108. Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

(2) The right to copy records under 35-1-1107 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the shareholders. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under 35-1-1107(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

History: En. Sec. 175, Ch. 368, L. 1991.

35-1-1109. Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with 35-1-1107(1) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with 35-1-1107(2) and (3) may apply to the district court in the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

History: En. Sec. 176, Ch. 368, L. 1991; amd. Sec. 33, Ch. 240, L. 2007.

35-1-1110. Financial statement for shareholders. Upon the written request of any shareholder of a corporation, the corporation shall mail to the shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: En. Sec. 177, Ch. 368, L. 1991.

35-1-1111. Other reports to shareholders. (1) If a corporation indemnifies or advances expenses to a director under 35-1-442, 35-1-443, 35-1-444, or 35-1-445 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(2) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued and the consideration received by the corporation with or before the notice of the next shareholders' meeting.

History: En. Sec. 178, Ch. 368, L. 1991.

Part 12
Fees and Charges

35-1-1201. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120; amd. Sec. 2, Ch. 156, L. 1987.

35-1-1202. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121; amd. Sec. 59, Ch. 475, L. 1981.

35-1-1203. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124; amd. Sec. 60, Ch. 475, L. 1981.

35-1-1206. Fees for filing, copying, and services. (1) The secretary of state shall establish fees for the following:

(a) filing documents and issuing certificates as required by this chapter; and

(b) copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(2) Fees authorized under this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 7, Ch. 368, L. 1991; amd. Sec. 17, Ch. 396, L. 2001.

Cross-References

Fees relating to nonprofit corporations, 35-2-1003.
Limited liability companies — fees, 35-8-211.
Fees relating to limited partnerships, 35-12-521.

35-1-1207. Repealed. Sec. 18, Ch. 71, L. 2005.

History: En. Sec. 8, Ch. 368, L. 1991; amd. Sec. 13, Ch. 229, L. 1999; amd. Sec. 18, Ch. 396, L. 2001.

Part 13
Secretary of State

35-1-1301. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.

35-1-1302. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.

35-1-1303. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.

35-1-1304. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

35-1-1305. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

35-1-1306. Repealed. Sec. 216, Ch. 368, L. 1991.

History: En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.

35-1-1307. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: **En. Sec. 15, Ch. 368, L. 1991.**

35-1-1308. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats, including standard forms, for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state requires, use of any of the forms or formats listed in subsection (1) is mandatory.

History: **En. Sec. 6, Ch. 368, L. 1991; amd. Sec. 9, Ch. 75, L. 2003.**

35-1-1309. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of 35-1-217 and 35-1-218, if applicable, the secretary of state shall file the document.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the document was received by the secretary of state for filing. After filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and all applicable fees have been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or the corporation's representative within 10 business days after the document was delivered to the secretary of state, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

History: **En. Sec. 11, Ch. 368, L. 1991; amd. Sec. 10, Ch. 75, L. 2003; amd. Sec. 6, Ch. 71, L. 2005; amd. Sec. 5, Ch. 33, L. 2007; amd. Sec. 34, Ch. 240, L. 2007.**

Cross-References

Authorization for electronic filing system, 2-15-404.
Articles of incorporation, 35-1-216.
Amendment of articles, 35-1-230.
Restated articles of incorporation, 35-1-231.

35-1-1310. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is begun by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: **En. Sec. 12, Ch. 368, L. 1991; amd. Sec. 1278, Ch. 56, L. 2009.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.
Judicial review of contested cases, Title 2, ch. 4, part 7.

35-1-1311. Evidentiary effect of copy of filed document. A certificate attached to a copy of the document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 13, Ch. 368, L. 1991.

Cross-References

Foreign nonprofit corporations — certified copies — evidentiary effect, 35-2-1111.

35-1-1312. Certificate of existence or authority. (1) Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authority for a foreign corporation.

(2) A certificate of existence or authority must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state and the department of revenue; and

(ii) nonpayment affects the existence or authority of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-1-1104 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence or authority issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

History: En. Sec. 14, Ch. 368, L. 1991; amd. Sec. 38, Ch. 7, L. 2001.

35-1-1313 and 35-1-1314 reserved.

35-1-1315. Rulemaking authority and use of forms prescribed by secretary of state. The secretary of state may prescribe by rule a standard form for materials required to be filed with the secretary of state pursuant to Title 35. If the secretary of state prescribes a standard form pursuant to this section, the entity filing the form shall use the prescribed form.

History: En. Sec. 1, Ch. 75, L. 2003.

CHAPTER 2
NONPROFIT CORPORATIONS

Part 1 — General

35-2-101. Renumbered 35-2-113.
35-2-102. Repealed.
35-2-103. Repealed.
35-2-104. Repealed.
35-2-105. Repealed.
35-2-106. Repealed.
35-2-107. Repealed.
35-2-108. Repealed.
35-2-109. Repealed.
35-2-110. Repealed.
35-2-111. Repealed.
35-2-112. Repealed.
35-2-113. Short title.
35-2-114. Definitions.
35-2-115. Notice.
35-2-116. Reservation of power to amend or repeal.
35-2-117. Purposes.
35-2-118. General powers.
35-2-119. Filing requirements.

35-2-120. Facsimile filing.
35-2-121. Effective date of document.
35-2-122. Correcting filed document.
35-2-123. Penalty for signing false documents.
35-2-124 and 35-2-125 reserved.
35-2-126. Designation of status of nonprofit corporations.
35-2-127. Private foundations.
35-2-128. Religious corporations — constitutional protections.
35-2-129 reserved.
35-2-130. Judicial relief.
35-2-131. Attorney general.
35-2-132. Ultra vires.
35-2-133. Terminated.

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35-2-202. Repealed.
35-2-203. Repealed.
35-2-204. Repealed.
35-2-205. Repealed.
35-2-206. Repealed.
35-2-207. Repealed.
35-2-208. Repealed.
35-2-209. Repealed.
35-2-210. Repealed.
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35-2-212. Incorporators.
35-2-213. Articles of incorporation.
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35-2-215. Liability for preincorporation transactions.
35-2-216. Organization of corporation.
35-2-217. Bylaws.
35-2-218. Emergency bylaws and powers.
35-2-219 and 35-2-220 reserved.
35-2-221. Authority to amend.
35-2-222. Amendment by directors.
35-2-223. Amendment by directors and members.
35-2-224. Class voting by members on amendments.
35-2-225. Articles of amendment.
35-2-226. Restated articles of incorporation.
35-2-227. Amendment pursuant to judicial reorganization.
35-2-228. Effect of amendment and restatement.
35-2-229. Amendment by directors.
35-2-230. Amendment by directors and members.
35-2-231. Class voting by members on amendments.
35-2-232. Approval by third persons.
35-2-233. Amendment terminating members or redeeming or canceling memberships.

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35-2-306. Reserved name.
35-2-307. Registered name of foreign corporation.
35-2-308 reserved.
35-2-309. Repealed.
35-2-310. Repealed.
35-2-311. Repealed.
35-2-312 and 35-2-313 reserved.
35-2-314. Repealed.
35-2-315. Repealed.

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35-2-428. Action without meeting.
35-2-429. Call and notice of meetings.
35-2-430. Waiver of notice.
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35-2-611. Articles of merger.
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35-2-614. Bequests, devises, and gifts.
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Chapter Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Part 1
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35-2-101. Renumbered 35-2-113. Sec. 175, Ch. 411, L. 1991.

35-2-102. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302; amd. Sec. 3, Ch. 273, L. 1989.

35-2-103. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

35-2-104. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.

35-2-105. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.

35-2-106. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.

35-2-107. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.

35-2-108. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.

35-2-109. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.

35-2-110. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.

35-2-111. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.

35-2-112. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.

35-2-113. Short title. This chapter shall be known and may be cited as the "Montana Nonprofit Corporation Act".

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301; Sec. 35-2-101, MCA 1989; redes. 35-2-113 by Sec. 175, Ch. 411, L. 1991.

35-2-114. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved by the members" means approved and ratified by the affirmative vote:

(a) of a majority of the votes represented and voting:

(i) at a meeting at which a quorum is present and the affirmative votes constitute a majority of the required quorum;

(ii) by a written ballot or written consent in conformity with this chapter; or

(iii) by the affirmative vote, written ballot, or written consent of the majority; and

(b) that includes the votes of all the members of any class, unit, or grouping that may be required by the articles, bylaws, or this chapter for any specified member action.

(2) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger.

(3) "Board" or "board of directors" means the board of directors except that a person or group of persons is not the board of directors because of powers delegated to that person or group pursuant to 35-2-414.

(4) "Bylaws" means the code, codes, or rules, other than the articles, adopted pursuant to this chapter for the regulation or management of the affairs of the corporation, regardless of the name or names by which the code, codes, or rules are designated.

(5) "Class" refers to a group of memberships that have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights must be considered the same if they are determined by a formula applied uniformly.

(6) "Corporation" means a public benefit corporation, mutual benefit corporation, or religious corporation.

(7) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters.

(8) "Deliver" includes mail.

(9) "Directors" means individuals:

(a) designated in the articles or bylaws or elected by the incorporators and their successors; and

(b) elected or appointed by any other name or title to act as members of the board.

(10) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers.

(11) "Domestic corporation" means a corporation.

(12) "Effective date of notice" has the meaning provided in 35-2-115(5).

(13) "Employee" does not include an officer or director who is not otherwise employed by the corporation.

(14) "Entity" includes:

(a) a corporation and foreign corporation;

(b) a business corporation and foreign business corporation;

(c) a profit and nonprofit unincorporated association;

(d) a corporation sole;

(e) a business trust, an estate, a partnership, a trust, and two or more persons having a joint or common economic interest; and

(f) a state, the United States, and a foreign government.

(15) "File", "filed", or "filing" means filed in the office of the secretary of state.

(16) "Foreign corporation" means a corporation that is organized under a law other than the law of this state and that would be a nonprofit corporation if formed under the laws of this state.

(17) "Governmental subdivision" includes an authority, county, district, and municipality.

(18) "Includes" denotes a partial definition.

(19) "Individual" includes the estate of an incompetent individual.

(20) "Means" denotes a complete definition.

(21) (a) "Member" means, without regard to what a person is called in the articles or bylaws, a person or persons who, on more than one occasion and pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors.

(b) A person is not a member by virtue of any of the following:

(i) any rights the person has as a delegate;

(ii) any rights the person has to designate a director or directors; or

(iii) any rights the person has as a director.

(22) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and this chapter.

(23) "Mutual benefit corporation" means a domestic corporation designated as a mutual benefit corporation.

(24) "Notice" means that term as described in 35-2-115.

(25) "Person" includes any individual or entity.

(26) "Principal office" means the office, in the state or out of the state, that is designated in the annual report filed pursuant to 35-2-904 as the place where the principal office of a domestic or foreign corporation is located.

(27) "Proceeding" includes a civil suit and a criminal, administrative, and investigatory action.

(28) "Public benefit corporation" means a domestic corporation designated as a public benefit corporation.

(29) "Record date" means the date established under part 5 on which a corporation determines the identity of its members for the purposes of this chapter.

(30) "Religious corporation" means a domestic corporation designated as a religious corporation.

(31) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under 35-2-439(2) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation.

(32) "State", when referring to a part of the United States, includes:

(a) a state and commonwealth and their agencies and governmental subdivisions; and

(b) a territory and insular possession, their agencies, and governmental subdivisions of the United States.

(33) "United States" includes a district, an authority, a bureau, a commission, a department, and any other agency of the United States.

(34) "Vote" includes authorization by written ballot and written consent.

(35) (a) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made.

(b) The term excludes a vote that is contingent upon the happening of a condition or event that has not occurred at the time.

(c) When a class is entitled to vote as a class for directors, the determination of voting power of the class must be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

History: En. Sec. 1, Ch. 411, L. 1991.

35-2-115. Notice. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(2) (a) Notice may be communicated in person; by telephone, telegraph, teletype, facsimile, or other form of wire or wireless communication; or by mail or private carrier.

(b) If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where it is published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its members, if in a comprehensible form, is effective when mailed if it is mailed postpaid and correctly addressed to the member's address shown in the corporation's current record of members.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to:

(a) its registered agent; or

(b) the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsections (3) and (4), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) 5 days after its deposit in the United States mail, as evidenced by the postmark, if it is mailed postpaid and with correct postage; or

(c) on the date shown on the return receipt, if it is sent by certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if it is communicated in a comprehensible manner.

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements that are consistent with this section or other provisions of this chapter, those requirements govern.

History: En. Sec. 2, Ch. 411, L. 1991; amd. Sec. 35, Ch. 240, L. 2007.

35-2-116. Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this chapter at any time, and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

History: En. Sec. 3, Ch. 411, L. 1991.

35-2-117. Purposes. (1) A corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this chapter only if the incorporation under this chapter is not prohibited by the other statute. The corporation is subject to all limitations of the other statute.

History: En. Sec. 28, Ch. 411, L. 1991.

35-2-118. General powers. (1) Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(a) to sue and be sued, complain, and defend in its corporate name;

(b) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing, affixing, or in any other manner reproducing it;

(c) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(d) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(e) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in or obligations of any other entity;

(g) to make contracts and guaranties; to incur liabilities; to borrow money; to issue notes, bonds, and other obligations; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by 35-2-435;

(i) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(j) to conduct its activities, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(k) to elect or appoint directors, officers, employees, and agents of the corporation; to define their duties; and to fix their compensation;

(l) to pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;

(m) to make donations consistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;

(n) to impose dues, assessments, admission, and transfer fees upon its members;

(o) to establish conditions for admission of members, admit members, and issue memberships;

(p) to carry on a business; or

(q) to do all things necessary or convenient consistent with law to further the activities and affairs of the corporation.

(2) A corporation may not have or issue shares of stock.

History: En. Sec. 29, Ch. 411, L. 1991.

Cross-References

Bylaws, 35-2-217, 35-2-218, 35-2-229, 35-2-230.

35-2-119. Filing requirements. All of the following requirements must be met before a document may be filed under this section by the secretary of state:

(1) A document that is required or permitted by this chapter to be filed in the office of the secretary of state must satisfy the requirements of this section and of any other section that adds to or varies these requirements.

(2) The document must contain the information required by this chapter. The document may contain other information as well.

(3) The document must be typewritten or printed.

(4) The document must be in the English language. However, a corporate name does not need to be in English if it is written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations does not need to be in English if it is accompanied by a reasonably authenticated English translation.

(5) (a) Except as provided in subsection (5)(b), the document must be executed:

(i) by the presiding officer of the corporation's board of directors, its president, or another of its officers;

(ii) if directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(b) (i) A corporation's annual report may be executed as provided in subsection (5)(a) or by the corporation's authorized agent.

(ii) For the purposes of this subsection (5)(b), "authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(6) The person executing the document shall sign the document and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but does not need to contain the corporate seal, an attestation by the secretary or an assistant secretary, or an acknowledgment, verification, or proof.

(7) The document must be in or on the prescribed form if the secretary of state has prescribed a mandatory form for a document under 35-2-1108.

(8) The document must be delivered to the office of the secretary of state for filing and must be accompanied by:

(a) the correct filing fee; and

(b) any franchise tax, license fee, or penalty required by this chapter, rules promulgated under this chapter, or other law.

History: En. Sec. 4, Ch. 411, L. 1991; amd. Sec. 7, Ch. 71, L. 2005; amd. Sec. 6, Ch. 33, L. 2007.

35-2-120. Facsimile filing. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section and the signatures on the facsimile copy in the same manner as an original for purposes of 35-2-119, 35-2-121 through 35-2-123, 35-2-1003, 35-2-1108 through 35-2-1112, and this section. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 5, Ch. 411, L. 1991; amd. Sec. 6, Ch. 290, L. 1997.

35-2-121. Effective date of document. (1) Except as provided in subsection (2), a document is effective:

(a) at the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(b) at the time specified in the document as its effective time on the date it is filed.

(2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than 90 days after the date it is filed.

History: En. Sec. 8, Ch. 411, L. 1991.

35-2-122. Correcting filed document. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(a) contains an incorrect statement; or

(b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) by preparing articles of correction that:

(i) describe the document, including its filing date, or have attached a copy of the document;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(iii) correct the incorrect statement or defective execution; and

(b) by delivering the articles of correction to the secretary of state.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

History: En. Sec. 9, Ch. 411, L. 1991.

35-2-123. Penalty for signing false documents. (1) The execution of any document that must be filed with the secretary of state under 35-2-119 through 35-2-122, 35-2-1003, 35-2-1108 through 35-2-1112, and this section constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this chapter.

History: En. Sec. 14, Ch. 411, L. 1991.

Cross-References

Penalty for false swearing, 45-7-202.

35-2-124 and 35-2-125 reserved.

35-2-126. Designation of status of nonprofit corporations. (1) A domestic corporation must be designated as either a public benefit, mutual benefit, or religious corporation. The specific designation of a corporation is as follows:

(a) A corporation designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by its articles of incorporation.

(b) A corporation that is not designated by its articles of incorporation as a public benefit corporation, a mutual benefit corporation, or religious corporation is the type of corporation designated in the annual report filed in 1995.

(2) A foreign corporation must be designated as either a foreign public benefit, foreign mutual benefit, or foreign religious corporation. The specific designation of a corporation is as follows:

(a) A foreign corporation designated by its articles of incorporation as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation designated by its articles of incorporation.

(b) A foreign corporation not designated as provided in subsection (2)(a), but designated in its application for a certificate of authority, or any amendments of the application, as a public benefit corporation, mutual benefit corporation, or religious corporation is the type of foreign corporation it designated in its application for a certificate of authority.

(c) A foreign corporation not designated as provided in subsection (2)(a) or (2)(b) is the type of corporation it designated in the annual report filed in 1995.

History: En. Sec. 16, Ch. 411, L. 1991.

35-2-127. Private foundations. (1) Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

(a) shall distribute amounts for each taxable year at a time and in a manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) may not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) may not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) may not make any taxable investments or expenditures as provided in sections 4944 and 4945 of the Internal Revenue Code; and

(e) may not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

(2) All references in this section to sections of the Internal Revenue Code are to sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

History: En. Sec. 17, Ch. 411, L. 1991.

Cross-References

Taxes on golf courses owned by nonprofit corporations, 15-6-134.
Tax-exempt property, Title 15, ch. 6, part 2.
Tax-exempt property categories, 15-6-201.
Exempt securities, 30-10-104.

35-2-128. Religious corporations — constitutional protections. If the religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this chapter on the same subject, the religious doctrine controls to the extent required by the United States or the Montana constitution.

History: En. Sec. 20, Ch. 411, L. 1991.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

35-2-129 reserved.

35-2-130. Judicial relief. (1) If for any reason it is impractical or impossible for a corporation to call or conduct a meeting of its members, delegates, or directors or to otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or this chapter, then upon petition of a director, officer, delegate, member, or the attorney general, the state district court for the judicial district in which the principal office is located or, if the principal office is not located in this state, in Lewis and Clark County may order that a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in the manner the court finds fair and equitable under the circumstances.

(2) In an order issued pursuant to this section, the court shall provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws, and this chapter, whether or not the method results in actual notice to all persons entitled to notice or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(3) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or this chapter.

(4) Whenever practical, an order issued pursuant to this section must limit the subject matter of meetings or other forms of consent authorized to approve items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. However, an order under

this section may also authorize the obtaining of votes and approvals necessary for dissolution, merger, or sale of assets.

(5) A meeting or other method of obtaining the vote of members, delegates, or directors that is conducted pursuant to an order issued under this section and that complies with all the provisions of the order is for all purposes a valid meeting or vote, and has the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and this chapter.

History: En. Sec. 18, Ch. 411, L. 1991; amd. Sec. 36, Ch. 240, L. 2007.

35-2-131. Attorney general. (1) Notice must be given to the attorney general of the commencement of any proceeding that this chapter authorizes the attorney general to bring but that has been commenced by another person.

(2) Whenever a provision of this chapter requires that notice be given to the attorney general before or after commencing a proceeding or permits the attorney general to commence a proceeding if no proceeding has been commenced, the attorney general may take appropriate action including but not limited to seeking injunctive relief. If a proceeding has been commenced by a person other than the attorney general, the attorney general may intervene, as of right, in the proceeding.

History: En. Sec. 19, Ch. 411, L. 1991.

35-2-132. Ultra vires. (1) Except as provided in subsection (2), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the attorney general, by a director, or by a member or members in a derivative proceeding.

(3) (a) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation.

(b) The proceeding may be brought:

(i) by a director;

(ii) by the corporation, directly, derivatively, or through a receiver, a trustee, or other legal representative; or

(iii) in the case of a public benefit corporation, by the attorney general.

History: En. Sec. 30, Ch. 411, L. 1991.

Cross-References

Power of court to dissolve corporation, 35-2-728.
Activities not to be considered transacting business, 35-2-820.
Transacting business without certificate of authority, 35-2-821.

35-2-133. Terminated. Sec. 181, Ch. 411, L. 1991.

History: En. Sec. 173, Ch. 411, L. 1991.

Part 2
Formation — Articles of Incorporation Bylaws — Amendments

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-2-201. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328; amd. Sec. 36, Ch. 131, L. 1983.

35-2-202. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979; amd. Sec. 2, Ch. 559, L. 1987; amd. Sec. 193, Ch. 368, L. 1991.

35-2-203. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330; amd. Sec. 37, Ch. 131, L. 1983.

35-2-204. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

35-2-205. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

35-2-206. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

35-2-208. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335; amd. Sec. 38, Ch. 131, L. 1983.

35-2-209. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336; amd. Sec. 39, Ch. 131, L. 1983.

35-2-210. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979; amd. Sec. 40, Ch. 131, L. 1983; amd. Sec. 6, Ch. 445, L. 1985.

35-2-211. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.

35-2-212. Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

History: En. Sec. 21, Ch. 411, L. 1991.

Cross-References

Directors and officers, Title 35, ch. 2, part 4.
Fees, 35-2-1003.

35-2-213. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) a corporate name for the corporation that satisfies the requirements of 35-2-305;

(b) a statement that:

(i) the corporation is a public benefit corporation;

(ii) the corporation is a mutual benefit corporation; or

(iii) the corporation is a religious corporation;

(c) the information required by 35-7-105(1);

(d) the name and business mailing address of each incorporator;

(e) whether or not the corporation will have members; and

(f) provisions consistent with law regarding the distribution of assets on dissolution.

(2) The articles of incorporation may set forth:

(a) the purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(b) the names and business mailing addresses of the individuals who are to serve as the initial directors;

(c) provisions consistent with law regarding:

(i) managing and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, its members, or any class of members; and

(iii) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

(d) any provision that under this chapter is required or permitted to be set forth in the bylaws; and

(e) provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of a director's duties to the corporation and its members, provided that the provision may not eliminate or limit the liability of a director:

(i) for a breach of the director's duty of loyalty to the corporation or its members;

(ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(iii) for a transaction from which a director derived an improper personal economic benefit; or

(iv) under 35-2-418, 35-2-435, or 35-2-436.

(3) A provision referred to in subsection (2)(e) may not eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

(4) Each incorporator and director named in the articles shall sign the articles.

(5) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

History: En. Sec. 22, Ch. 411, L. 1991; amd. Sec. 37, Ch. 240, L. 2007; amd. Sec. 12, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) before "address" inserted "business mailing"; and in (2)(b) before "addresses" inserted "business mailing". Amendment effective October 1, 2011.

Cross-References

Number, election, and term of directors, 35-2-415, 35-2-417, 35-2-419.

35-2-214. Incorporation. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed by the secretary of state.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators have satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

History: En. Sec. 23, Ch. 411, L. 1991.

Cross-References

Certificates as conclusive evidence, 35-2-1111.

35-2-215. Liability for preincorporation transactions. A person who purports to act as or on behalf of a corporation but who knows that there was no incorporation under this chapter is jointly and severally liable for all liabilities created while so acting.

History: En. Sec. 24, Ch. 411, L. 1991.

35-2-216. Organization of corporation. (1) After incorporation:

(a) if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(b) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in the state or out of the state in accordance with 35-2-427.

History: En. Sec. 25, Ch. 411, L. 1991.

Cross-References

Directors' meetings, 35-2-427.

Meetings of members, 35-2-526, 35-2-527.

35-2-217. Bylaws. (1) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(2) The bylaws may contain any provision for regulating and managing the affairs of the corporation consistent with law or the articles of incorporation.

History: En. Sec. 26, Ch. 411, L. 1991.

35-2-218. Emergency bylaws and powers. (1) Unless the articles provide otherwise, the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency as defined in subsection (4). The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(a) how to call a meeting of the board;
(b) quorum requirements for the meeting; and
(c) designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain in effect during the emergency. The emergency bylaws are not in effect after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:
(a) binds the corporation; and
(b) may not be used to impose liability on a corporate director, officer, employee, or agent.

(4) For purposes of this section, an emergency exists if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

History: En. Sec. 27, Ch. 411, L. 1991.

35-2-219 and 35-2-220 reserved.

35-2-221. Authority to amend. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

History: En. Sec. 110, Ch. 411, L. 1991.

35-2-222. Amendment by directors. (1) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

(a) to extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(b) to delete the names and addresses of the initial directors;

(c) to change the information required by 35-7-105(1);

(d) to change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd." for a similar word or abbreviation in the name or by adding, deleting, or changing a geographical attribution to the name; or

(e) to make any other change expressly permitted by this chapter to be made by action of the board of directors.

(2) If a corporation has no members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the articles and must contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: En. Sec. 111, Ch. 411, L. 1991; amd. Sec. 38, Ch. 240, L. 2007.

35-2-223. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's articles must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) except as provided in 35-2-222(1), by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the articles or if board approval is required by subsection (1)(a) to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: En. Sec. 112, Ch. 411, L. 1991.

Cross-References

Notice of members' meetings, 35-2-530.

35-2-224. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment affects another class or members of another class.

(2) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit corporation or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.

(5) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members of a public benefit corporation or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 113, Ch. 411, L. 1991.

35-2-225. Articles of amendment. A corporation that amends its articles shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(1) the name of the corporation;

(2) the text of each amendment adopted;

(3) the date of each amendment's adoption;

(4) if approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(5) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(b) (i) either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class; and

(ii) a statement that the number cast for the amendment by each class was sufficient for approval by that class; and

(6) if approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-232, a statement that the approval was obtained.

History: En. Sec. 114, Ch. 411, L. 1991.

35-2-226. Restated articles of incorporation. (1) A corporation's board of directors may restate its articles of incorporation at any time, with or without approval by members or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in 35-2-223.

(3) If the restatement includes an amendment requiring approval by members, the board shall submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change that the restatement would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under 35-2-223.

(7) If the restatement includes an amendment that requires approval pursuant to 35-2-232, the board shall submit the restatement for this approval.

(8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate setting forth a statement of whether the restated articles were approved by the board, the members, or any other person and:

(a) if the restatement contains an amendment to the articles requiring approval by the members, the information required by 35-2-225;

(b) if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to 35-2-232, a statement that the approval was obtained; and

(c) if the restatement has an amendment that does not require member approval, a statement as to who approved the amendment, whether approval was made by the board or any other person.

(9) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (8).

History: En. Sec. 115, Ch. 411, L. 1991; amd. Sec. 14, Ch. 229, L. 1999.

Cross-References

Articles of incorporation, 35-2-213.

Fees, 35-2-1003.

Filing duty of Secretary of State, 35-2-1109.

35-2-227. Amendment pursuant to judicial reorganization. (1) A corporation's articles may be amended without board approval, approval by the members, or approval required pursuant to 35-2-232 if necessary to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles, after amendment, contain only provisions required or permitted by 35-2-213.

(2) The individual or individuals designated by the court shall deliver to the secretary of state, for filing, articles of amendment setting forth:

(a) the name of the corporation;

(b) the text of each amendment approved by the court;

(c) the date of the court's order or decree approving the articles of amendment;

(d) the title of the reorganization proceeding in which the order or decree was entered; and

(e) a statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

History: En. Sec. 116, Ch. 411, L. 1991.

35-2-228. Effect of amendment and restatement. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which the property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

History: En. Sec. 117, Ch. 411, L. 1991.

35-2-229. Amendment by directors. If a corporation does not have members, its incorporators, until directors have been chosen, and later its board of directors may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to 35-2-232. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

History: En. Sec. 118, Ch. 411, L. 1991.

35-2-230. Amendment by directors and members. (1) Unless this chapter, the articles, the bylaws, the members acting pursuant to subsection (2), or the board of directors acting pursuant to subsection (3) require a greater vote or voting by class to be adopted, an amendment to a corporation's bylaws must be approved:

(a) by the board if the corporation is a public benefit corporation or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; or

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232.

(2) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(3) If the board initiates an amendment to the bylaws or if board approval is required by subsection (1)(a) to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and must contain or be accompanied by a copy or summary of the amendment.

(5) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the amendment.

History: En. Sec. 119, Ch. 411, L. 1991.

35-2-231. Class voting by members on amendments. (1) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different from the manner in which the amendment would affect another class or members of another class.

(2) Members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different from the manner in which the amendment would affect another class;

(b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;

(c) increase or decrease the number of memberships authorized for that class;

(d) increase the number of memberships authorized for another class;

(e) cause an exchange, reclassification, or termination of all or part of the memberships of that class; or

(f) authorize a new class of memberships.

(3) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(4) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(5) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(6) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

History: En. Sec. 120, Ch. 411, L. 1991.

35-2-232. Approval by third persons. The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of the person or persons.

History: En. Sec. 121, Ch. 411, L. 1991.

35-2-233. Amendment terminating members or redeeming or canceling memberships. (1) Any amendment to the articles or bylaws of a public benefit corporation or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of this chapter.

(2) Before adopting a resolution proposing an amendment described in subsection (1), the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(3) After adopting a resolution proposing an amendment described in subsection (1), the notice to members proposing the amendment must include one statement of up to 500 words opposing the proposed amendment if the statement is submitted by any five members or members having 3% or more of the voting power, whichever is less, not later than 20 days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations, the production and mailing costs must be paid by the corporation.

(4) Any amendment under this section must be approved by the members by two-thirds of the votes cast by each class.

(5) The provisions of 35-2-520 do not apply to any amendment that meets the requirements of this chapter.

History: En. Sec. 122, Ch. 411, L. 1991.

Part 3
Corporate Name, Registered Office and Agent, and Service of Process

35-2-301. Repealed. Sec. 174, Ch. 411, L. 1991.
History: **En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307; amd. Sec. 6, Ch. 456, L. 1983.**

35-2-302. Repealed. Sec. 174, Ch. 411, L. 1991.
History: **En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.**

35-2-303. Repealed. Sec. 174, Ch. 411, L. 1991.
History: **En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309; amd. Sec. 41, Ch. 131, L. 1983.**

35-2-304. Repealed. Sec. 174, Ch. 411, L. 1991.
History: **En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.**

35-2-305. Corporate name. (1) (a) corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the corporation is an entity other than a nonprofit corporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names.

History: **En. Sec. 31, Ch. 411, L. 1991; amd. Sec. 85, Ch. 120, L. 1993; amd. Sec. 4, Ch. 27, L. 2001.**

Cross-References

Petition to change name of nonprofit corporation, 27-31-102.
Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Business corporation — corporate name, Title 35, ch. 1, part 3.
Foreign corporation — corporate name, 35-1-1031.
Foreign nonprofit corporation, corporate name, 35-2-826.
Reservation or transfer fee, 35-2-1003.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-2-306. Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. Upon finding that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

History: En. Sec. 32, Ch. 411, L. 1991.

35-2-307. Registered name of foreign corporation. (1) A foreign corporation may register its corporate name, or its corporate name with any change required by 35-2-826, if the name is distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(b) a corporate name reserved under Title 35, chapter 1, or 35-2-306 or registered under this section.

(2) A foreign corporation shall register its corporate name, or its corporate name with any change required by 35-2-826, by delivering to the secretary of state, for filing, an application:

(a) setting forth its corporate name or its corporate name with any change required by 35-2-826, the state or country, the date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(b) accompanied by a certificate of existence, or a similar document, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use on the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state, for filing, a renewal application that complies with the requirements of subsection (2). The renewal application must be delivered between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may continue to qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation later incorporated under this chapter or by another foreign corporation later authorized to transact business in this state. The registration terminates when the foreign corporation is incorporated as a domestic corporation or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

History: En. Sec. 33, Ch. 411, L. 1991.

35-2-308 reserved.

35-2-309. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 34, Ch. 411, L. 1991; amd. Sec. 15, Ch. 229, L. 1999.

35-2-310. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 35, Ch. 411, L. 1991; amd. Sec. 11, Ch. 75, L. 2003.

35-2-311. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 36, Ch. 411, L. 1991.

35-2-312 and 35-2-313 reserved.

35-2-314. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 37, Ch. 411, L. 1991.

35-2-315. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 38, Ch. 411, L. 1991.

Part 4
Directors and Officers — Indemnification

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.
Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.
Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.
Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-2-401. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.

35-2-402. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.

35-2-403. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.

35-2-404. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.

35-2-405. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-406. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-407. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.

35-2-408. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.

35-2-409. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.

35-2-410. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.

35-2-411. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-412. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.

35-2-413. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.

35-2-414. Requirement for and duties of board. (1) Each corporation must have a board of directors.

(2) Except as provided in this chapter or subsection (3), all corporate powers are exercised by or under the authority of the board, and the affairs of the corporation managed under the direction of its board.

(3) The articles may authorize a person or persons to exercise some or all of the powers that would otherwise be exercised by a board. To the extent authorized, a person authorized under this subsection has the duties and responsibilities of the directors and the directors must be relieved from the duties and responsibilities to that extent.

History: En. Sec. 75, Ch. 411, L. 1991.

35-2-415. Qualifications and numbers of directors. (1) All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

(2) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(3) The number of directors may be increased or decreased, but to not fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

History: En. Sec. 76, Ch. 411, L. 1991.

35-2-416. General standards for directors. (1) A director shall discharge the duties as a director, including the director's duties as a member of a committee:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons with regard to matters that the director reasonably believes are within the person's professional or expert competence;

(c) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(d) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this section.

(5) A director may not be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including but not limited to property that may be subject to restrictions imposed by the donor or transferor of the property.

(6) This chapter does not modify any limitation of liability of directors provided by Title 27.

History: En. Sec. 91, Ch. 411, L. 1991; amd. Sec. 1279, Ch. 56, L. 2009.

35-2-417. Election, designation and appointment of directors. (1) If the corporation has members, all the directors except the initial directors must be elected at the first annual meeting of members and at each annual meeting thereafter unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or are designated.

(2) If the corporation does not have members, all the directors except the initial directors must be elected, appointed, or designated as provided in the articles or bylaws. If a method of designation or appointment is not set forth in the articles or bylaws, the directors, other than the initial directors, must be elected by the board.

History: En. Sec. 77, Ch. 411, L. 1991.

35-2-418. Director conflict of interest. (1) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (2) or (3).

(2) A transaction in which a director of a public benefit corporation or religious corporation has a conflict of interest may be approved:

(a) in advance by the vote of the board of directors or a committee of the board if:

(i) the material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) the directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(b) before or after it is consummated by obtaining approval of:

(i) the attorney general; or

(ii) a state district court in an action in which the attorney general is joined as a party.

(3) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(a) the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(b) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(4) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(a) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(b) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(5) For purposes of subsections (2) and (3), a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction. However, a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of or a vote cast by a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (2)(a) or (3)(a) if the transaction is otherwise approved as provided in subsection (2) or (3).

(6) For purposes of subsection (3)(b), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection (4)(a) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (3)(b). The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(7) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

History: En. Sec. 92, Ch. 411, L. 1991.

35-2-419. Terms of directors generally — staggered terms. (1) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed 5 years. In the absence of any term specified in the articles or bylaws, the term of each director is 1 year. Directors may be elected for successive terms.

(2) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(3) Except as provided in the articles or bylaws:

(a) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(b) the term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(4) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies or until there is a decrease in the number of directors.

(5) The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

History: En. Sec. 78, Ch. 411, L. 1991.

35-2-420. Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, the president, or the secretary.

(2) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

History: En. Sec. 79, Ch. 411, L. 1991.

35-2-421. Removal of directors elected by members or directors. (1) The members may remove one or more directors elected by them without cause.

(2) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(3) Except as provided in subsection (9), a director may be removed under subsection (1) or (2) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(4) If cumulative voting is authorized, a director may not be removed:

(a) if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal; or

(b) if the director was elected by a class, chapter, unit, or grouping of members and the number of votes of that class, chapter, unit, or grouping of members sufficient to elect the director under cumulative voting is voted against the director's removal.

(5) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose or one of the purposes of the meeting is removal of the director.

(6) In computing whether a director is protected from removal under subsections (2) through (4), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(7) An entire board of directors may be removed under subsections (1) through (5).

(8) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or by a greater number as is set forth in the articles or bylaws. However, a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(9) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(10) The articles or bylaws of a religious corporation may:

(a) limit the application of this section; and

(b) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members of the board.

History: En. Sec. 80, Ch. 411, L. 1991.

35-2-422. Removal of designated or appointed directors. (1) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(2) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. The removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

History: En. Sec. 81, Ch. 411, L. 1991.

35-2-423. Removal of directors by judicial proceeding. (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in the state, Lewis and Clark County may remove any director of the corporation from office in a proceeding commenced by the corporation, by its members holding at least 10% of the voting power of any class, or by the attorney general in the case of a public benefit corporation if the court finds that:

(a) (i) the director engaged in fraudulent or dishonest conduct or in gross abuse of authority or discretion with respect to the corporation; or

(ii) a final judgment has been entered finding that the director has violated a duty set forth in 35-2-416, 35-2-418, 35-2-435, or 35-2-436; and

(b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(3) If members or the attorney general commence a proceeding under subsection (1), the corporation must be made a party defendant.

(4) If a public benefit corporation or its members commence a proceeding under subsection (1), they shall give the attorney general written notice of the proceeding.

(5) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

History: En. Sec. 82, Ch. 411, L. 1991; amd. Sec. 39, Ch. 240, L. 2007.

35-2-424. Vacancy on board. (1) Unless the articles or bylaws provide otherwise and except as provided in subsections (2) and (3), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) (i) the members, if any, may fill the vacancy; or

(ii) if the vacant office was held by a director elected by a class, chapter, organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(b) the board of directors may fill the vacancy; or

(c) if the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(3) If a vacant office was held by a designated director, the vacancy must be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(4) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under 35-2-420(2) or otherwise, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

History: En. Sec. 83, Ch. 411, L. 1991.

35-2-425. Compensation of directors. Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of directors.

History: En. Sec. 84, Ch. 411, L. 1991.

35-2-426 reserved.

35-2-427. Regular and special meetings. (1) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(2) A board of directors may hold regular or special meetings in the state or out of the state.

(3) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by or to conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is considered to be present in person at the meeting.

History: En. Sec. 85, Ch. 411, L. 1991.

35-2-428. Action without meeting. (1) Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, be signed by each director, and be included in the minutes filed with the corporate records reflecting the action taken.

(2) Action taken under this section is effective when the last director signs the consent unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document.

History: En. Sec. 86, Ch. 411, L. 1991.

35-2-429. Call and notice of meetings. (1) Unless the articles or bylaws provide otherwise or unless the provisions of subsection (3) apply, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws, or subsection (3) provide otherwise, special meetings of the board must be preceded by at least 2 days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to 35-2-430.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board.

History: En. Sec. 87, Ch. 411, L. 1991; amd. Sec. 70, Ch. 51, L. 1999.

35-2-430. Waiver of notice. (1) A director may at any time waive a notice required by this chapter, the articles, or bylaws. Except as provided in subsection (2), the waiver must be in writing, be signed by the director entitled to the notice, and be filed with the minutes or the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this chapter, the articles, or bylaws, objects to lack of notice and does not vote for or assent to that action.

History: En. Sec. 88, Ch. 411, L. 1991.

35-2-431. Quorum and voting. (1) Except as otherwise provided in this chapter, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(2) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this chapter, the articles, or bylaws require the vote of a greater number of directors.

History: En. Sec. 89, Ch. 411, L. 1991.

35-2-432 reserved.

35-2-433. Committees of the board. (1) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee must have two or more directors who serve at the pleasure of the board.

(2) The creation of a committee and appointment of members to it must be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles or bylaws to take action under 35-2-431.

(3) Sections 35-2-427 through 35-2-431, which govern meetings, action without meetings, notice, waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members.

(4) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under 35-2-414.

(5) A committee of the board may not:

(a) authorize distributions;

(b) approve or recommend to members dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(d) adopt, amend, or repeal the articles or bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not by itself constitute compliance by a director with the standards of conduct described in 35-2-416.

History: En. Sec. 90, Ch. 411, L. 1991.

35-2-434 reserved.

35-2-435. Loans to or guaranties for directors and officers. (1) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(2) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

History: En. Sec. 93, Ch. 411, L. 1991.

35-2-436. Liability for unlawful distributions. (1) Unless a director complies with the applicable standards of conduct described in 35-2-416, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(2) A director held liable for an unlawful distribution under subsection (1) is entitled to contribution:

(a) from every other director who voted for or assented to the distribution and who did not comply with the applicable standards of conduct described in 35-2-416; and

(b) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

History: En. Sec. 94, Ch. 411, L. 1991.

35-2-437 and 35-2-438 reserved.

35-2-439. Required officers. (1) Unless otherwise provided in the articles or bylaws, a corporation has a president, a secretary, a treasurer, and any other officers appointed by the board.

(2) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(3) A person may simultaneously hold more than one office in a corporation.

History: En. Sec. 95, Ch. 411, L. 1991.

35-2-440. Duties and authority of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

History: En. Sec. 96, Ch. 411, L. 1991.

35-2-441. Standards of conduct for officers. (1) An officer with discretionary authority shall discharge the duties under that authority:

(a) in good faith;

(b) with the care an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(2) In discharging the duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) one or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(b) attorneys, public accountants, or other persons as to matters that the officer reasonably believes are within the person's professional or expert competence; or

(c) in the case of religious corporations, religious authorities, ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) An officer is not liable to the corporation, any member, or any other person for an action taken or not taken as an officer if the officer acted in compliance with this section.

(5) This part does not modify any limitation of liability of officers provided by Title 27.

History: En. Sec. 97, Ch. 411, L. 1991; amd. Sec. 1280, Ch. 56, L. 2009.

35-2-442. Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(2) A board may remove any officer at any time, with or without cause.

History: En. Sec. 98, Ch. 411, L. 1991.

35-2-443. Contract rights of officers. (1) The appointment of an officer does not of itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History: En. Sec. 99, Ch. 411, L. 1991.

35-2-444. Officers' authority to execute documents. A contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by a lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers did not have authority to execute the contract or other instrument if it is signed by:

(1) the presiding officer of the board and the president; or

(2) one person from each of the following:

(a) the presiding officer of the board or the president; and

(b) a vice president, the secretary, treasurer, or executive director.

History: En. Sec. 100, Ch. 411, L. 1991.

35-2-445 reserved.

35-2-446. Definitions. As used in 35-2-446 through 35-2-454, the following definitions apply:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) (a) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or the participants in or beneficiaries of the plan.

(b) Director includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include attorney fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax assessed with respect to an employee benefit plan, or reasonable expenses actually incurred with respect to a proceeding.

(5) (a) "Official capacity" means:

(i) when used with respect to a director, the office of director in a corporation; or

(ii) when used with respect to an individual other than a director, as contemplated in 35-2-452, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

History: En. Sec. 101, Ch. 411, L. 1991.

35-2-447. Authority to indemnify. (1) Except as provided in subsection (4), an individual made a party to a proceeding because the individual is or was a director may be indemnified against liability incurred in the proceeding if the individual:

(a) engaged in good faith conduct;

(b) reasonably believed:

(i) in the case of conduct in the individual's official capacity with the corporation, that the conduct was in its best interests; and

(ii) in all other cases, that the conduct was at least not opposed to its best interests; and

(c) in the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (1)(b)(ii).

(3) The termination of a proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) in connection with any other proceeding that charges improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 102, Ch. 411, L. 1991; amd. Sec. 1281, Ch. 56, L. 2009.

35-2-448. Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the individual is or was a director of the corporation, against reasonable expenses actually incurred by the director in connection with the proceeding.

History: En. Sec. 103, Ch. 411, L. 1991; amd. Sec. 1282, Ch. 56, L. 2009.

35-2-449. Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation with a written affirmation of the director's good faith belief that the director has met the standard of conduct described in 35-2-447;

(b) the director furnishes the corporation with a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under 35-2-446 through 35-2-454.

(2) The undertaking required by subsection (1)(b) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section must be made in the manner specified in 35-2-451.

History: En. Sec. 104, Ch. 411, L. 1991; amd. Sec. 1283, Ch. 56, L. 2009.

35-2-450. Court-ordered indemnification. Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines that the director:

(1) is entitled to mandatory indemnification under 35-2-448, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in 35-2-447(1) or was adjudged liable as described in 35-2-447(4). If the director was adjudged liable, indemnification is limited to reasonable expenses incurred.

History: En. Sec. 105, Ch. 411, L. 1991.

35-2-451. Determination and authorization of indemnification. (1) A corporation may not indemnify a director under 35-2-447 unless it is authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in 35-2-447.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board, in which selected directors who are parties may participate; or

(d) by the members of a mutual benefit corporation. However, directors who are at the time parties to the proceeding may not vote on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

(4) A director of a public benefit corporation may not be indemnified until 20 days after the effective date of written notice to the attorney general of the proposed indemnification.

History: En. Sec. 106, Ch. 411, L. 1991.

35-2-452. Indemnification of officers, employees, and agents. Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under 35-2-448 and is entitled to apply for court-ordered indemnification under 35-2-450 to the same extent as a director;

(2) the corporation may indemnify and advance expenses under 35-2-446 through 35-2-454 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History: En. Sec. 107, Ch. 411, L. 1991.

35-2-453. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under 35-2-447 or 35-2-448.

History: En. Sec. 108, Ch. 411, L. 1991; amd. Sec. 1284, Ch. 56, L. 2009.

35-2-454. Application. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, its bylaws, a resolution of its members or board of directors, a contract, or other instrument is valid only if and to the extent the provision is consistent with 35-2-446 through 35-2-454. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(2) Sections 35-2-446 through 35-2-454 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 109, Ch. 411, L. 1991.

Part 5
Members — Delegates — Voting

35-2-501. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

35-2-502. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.

35-2-503. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.

35-2-504. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.

35-2-505. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-506. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-507. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.

35-2-508. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).

35-2-509. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.

35-2-510. Admission. (1) The articles or bylaws may establish criteria or procedures for admission of members.

(2) A person may not be admitted as a member without the person's consent.

History: En. Sec. 39, Ch. 411, L. 1991; amd. Sec. 1285, Ch. 56, L. 2009.

35-2-511. Consideration. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration determined by the board.

History: En. Sec. 40, Ch. 411, L. 1991.

35-2-512. No requirement of members. A corporation is not required to have members.

History: En. Sec. 41, Ch. 411, L. 1991.

35-2-513. Differences in rights and obligations of members. All members have the same rights and obligations with respect to voting, dissolution, redemption, and transfer unless the articles or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

History: En. Sec. 42, Ch. 411, L. 1991.

35-2-514. Transfers. (1) Except as set forth in or authorized by the articles or bylaws, a member of a mutual benefit corporation may not transfer a membership or any right arising from a membership.

(2) A member of a public benefit or religious corporation may not transfer a membership or any right arising from a membership.

(3) When transfer rights have been provided, a restriction on them is not binding on a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

History: **En. Sec. 43, Ch. 411, L. 1991.**

35-2-515 reserved.

35-2-516. Member's liability to third parties. A member of a corporation is not, as a member, personally liable for the acts, debts, liabilities, or obligations of the corporation.

History: **En. Sec. 44, Ch. 411, L. 1991.**

35-2-517. Member's liability for dues, assessments, and fees. A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

History: **En. Sec. 45, Ch. 411, L. 1991.**

35-2-518. Creditor's action against member. (1) A proceeding may not be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless further proceeding would be useless.

(2) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (1) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in the proceeding.

History: **En. Sec. 46, Ch. 411, L. 1991.**

35-2-519. Resignation. (1) A member may resign at any time.

(2) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

History: **En. Sec. 47, Ch. 411, L. 1991.**

35-2-520. Termination, expulsion, and suspension. (1) A member of a public benefit corporation or mutual benefit corporation may not be expelled or suspended and membership in these corporations may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(2) A procedure is fair and reasonable when either:

(a) the articles or bylaws set forth a procedure that provides:

(i) not less than 15 days' prior written notice of the expulsion, suspension, or termination and the reasons for it; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, termination, or suspension not take place; or

(b) it takes into consideration all relevant facts and circumstances.

(3) A written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(4) A proceeding that challenges an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination.

(5) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to the expulsion or suspension.

History: **En. Sec. 48, Ch. 411, L. 1991.**

35-2-521 reserved.

35-2-522. Purchase of memberships. (1) A public benefit corporation or religious corporation may not purchase any of its memberships or any right arising from membership.

(2) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or

authorized by its articles or bylaws. A payment may not be made in violation of 35-2-1401 and 35-2-1402.

History: **En. Sec. 49, Ch. 411, L. 1991.**

35-2-523 reserved.

35-2-524. Delegates. (1) A corporation may provide in its articles or bylaws for delegates who have some or all of the authority of members.

(2) The articles or bylaws may set forth provisions relating to:

(a) the characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

(b) calling, noticing, holding, and conducting meetings of delegates; and

(c) carrying on corporate activities during and between meetings of delegates.

History: **En. Sec. 57, Ch. 411, L. 1991.**

35-2-525 reserved.

35-2-526. Annual and regular meetings. (1) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(3) Annual and regular membership meetings may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated in or fixed in accordance with the bylaws, annual and regular meetings must be held at the corporation's principal office.

(4) At the annual meeting:

(a) the president and chief financial officer shall report on the activities and financial condition of the corporation; and

(b) the members shall consider and act upon other matters that are raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(5) At regular meetings, the members shall consider and act upon matters raised consistent with the notice and voting requirements of 35-2-530 and 35-2-538(2).

(6) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(7) If the corporation has 50 or fewer members and if permitted by the bylaws, members may participate in a meeting of the members by means of a conference telephone call or similar communication equipment through which all persons participating in the meeting can hear each other at the same time. Participation in this manner constitutes presence in person at a meeting.

History: **En. Sec. 58, Ch. 411, L. 1991.**

35-2-527. Special meeting. (1) A corporation with members shall hold a special meeting of members:

(a) on the call of its board or of the person authorized to do so by the articles or bylaws; or

(b) except as provided in the articles or bylaws of a religious corporation, if the holders of at least 5% of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting that describe the purpose or purposes for which it is to be held.

(2) For purposes of determining whether the 5% requirement of subsection (1) has been met, the record date is at the close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer.

(3) If a notice for a special meeting demanded under subsection (1)(b) is not given pursuant to 35-2-530 within 30 days after the date the written demand is delivered to a corporate officer, regardless of the requirements of subsection (4), a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to 35-2-530.

(4) Special meetings of members may be held in the state or out of the state, at the place stated in or fixed in accordance with the bylaws. If a place is not stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

(5) Only those matters that are within the purpose or purposes described in the meeting notice required by 35-2-530 may be conducted at a special meeting of members.

History: **En. Sec. 59, Ch. 411, L. 1991.**

35-2-528. Court-ordered meeting. (1) The district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County may summarily order a meeting to be held:

(a) on application of a member or other person entitled to participate in an annual or regular meeting and, in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting;

(b) on application of a member or other person entitled to participate in a regular meeting and, in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within 40 days after the date it was required to be held; or

(c) on application of a member who signed a demand for a special meeting valid under 35-2-527, a person entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(i) notice of the special meeting was not given within 30 days after the date the demand was delivered to a corporate officer; or

(ii) the special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(3) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

History: En. Sec. 60, Ch. 411, L. 1991; amd. Sec. 40, Ch. 240, L. 2007.

35-2-529. Action by written consent. (1) Unless limited or prohibited by the articles or bylaws, action required or permitted by this chapter to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least 80% of the voting power. The action must be evidenced by one or more written consents that describe the action taken, be signed by those members representing at least 80% of the voting power, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise determined under 35-2-528 or 35-2-532, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (1).

(3) A consent signed under this section has the effect of a meeting vote and may be described as a vote in any document filed with the secretary of state.

(4) Written notice of member approval pursuant to this section must be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section is effective 10 days after written notice is given.

History: En. Sec. 61, Ch. 411, L. 1991.

35-2-530. Notice of meeting. (1) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(2) Any notice that conforms to the requirements of subsection (3) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. However, notice of matters referred to in subsection (3)(b) must be given as specified in subsection (3).

(3) Notice is fair and reasonable if:

(a) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members not less than 10 days before the meeting date or, if notice is mailed by certified mail, not less than 30 or more than 60 days before the meeting date;

(b) notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under 35-2-223, 35-2-230, 35-2-418, 35-2-452, 35-2-611, 35-2-617, 35-2-720, or 35-2-721; and

(c) notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under 35-2-532, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.

(5) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(a) requested in writing to do so by a person entitled to call a special meeting; and

(b) the request is received by the secretary or president of the corporation at least 10 days before the corporation gives notice of the meeting.

History: En. Sec. 62, Ch. 411, L. 1991.

35-2-531. Waiver of notice. (1) A member may waive a notice required by this chapter, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A member's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

History: En. Sec. 63, Ch. 411, L. 1991.

35-2-532. Record date — determining members entitled to notice and vote. (1) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members are entitled to notice of the meeting:

(a) at the close of business on the business day preceding the day on which notice is given; or

(b) if notice is waived, at the close of business on the business day preceding the day on which the meeting is held.

(2) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(3) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance the record date. If a record date is not fixed, members are entitled to exercise the rights at the close of business on the day on which the board adopts the resolution relating to it or 60 days prior to the date of other action, whichever is later.

(4) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of members occurs.

(5) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than 70 days after the record date for determining members entitled to notice of the original meeting.

(6) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

History: En. Sec. 64, Ch. 411, L. 1991.

35-2-533. Action by written ballot. (1) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot must:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) Approval by written ballot pursuant to this section is valid only when:

(a) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

(b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(4) All solicitations for votes by written ballot must:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors; and

(c) specify the time by which a ballot must be received by the corporation in order to be counted.

(5) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

History: En. Sec. 65, Ch. 411, L. 1991.

35-2-534 reserved.

35-2-535. Members' list for meeting. (1) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare, on a current basis through the time of the membership meeting, a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members.

(2) The list of members must be available:

(a) for inspection by any member for the purpose of communication with other members concerning the meeting, beginning 2 business days after notice is given of the meeting for which the list was prepared and continuing through the meeting; and

(b) at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or a member's attorney is entitled, on written demand, to inspect and, subject to the limitations of 35-2-907(3) and 35-2-910, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(3) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting or to copy the list as permitted by subsection (2), the district court for the judicial district of the county where a corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, on application of the member, may summarily order the inspection or copying at the corporation's expense, may postpone the meeting for which the list was prepared until the inspection or copying is complete, and may order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order.

(5) Unless a written demand to inspect and copy a membership list has been made under subsection (2) prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(6) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

History: **En. Sec. 66, Ch. 411, L. 1991; amd. Sec. 41, Ch. 240, L. 2007.**

35-2-536. Voting entitlement generally. (1) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(2) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

(a) if only one votes, the act binds all; and

(b) if more than one votes, the vote is divided on a pro rata basis.

History: **En. Sec. 67, Ch. 411, L. 1991.**

35-2-537. Quorum requirements. (1) Unless this chapter, the articles, or bylaws provide for a higher or lower quorum, 10% of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(2) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(3) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(4) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

History: **En. Sec. 68, Ch. 411, L. 1991.**

35-2-538. Voting requirements. (1) Unless this chapter, the articles, or bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, if they are a majority of the required quorum, is the act of the members.

(2) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

History: **En. Sec. 69, Ch. 411, L. 1991.**

35-2-539. Proxies. (1) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form, either personally or by an attorney-in-fact.

(2) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment form. However, a proxy is not valid for more than 3 years from its date of execution.

(3) An appointment of a proxy is revocable by the member.

(4) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(5) Appointment of a proxy is revoked by the person appointing the proxy:

(a) attending any meeting and voting in person; or

(b) signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(6) Subject to 35-2-542 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member who made the appointment.

History: **En. Sec. 70, Ch. 411, L. 1991.**

35-2-540. Cumulative voting for directors — exception. (1) If the articles or bylaws provide for cumulative voting by members, members may so vote by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

(2) Cumulative voting is not authorized at a particular meeting unless:

(a) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(b) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes. If one member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(3) A director elected by cumulative voting may be removed by the members without cause if the requirements of 35-2-421 are met unless the votes cast against removal or not consenting in writing to removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast or, if the action is taken by written ballot, all memberships entitled to vote were voted, and if the entire number of directors authorized at the time of the director's most recent election were then being elected.

(4) Members may not cumulatively vote if the directors and members are identical.

History: En. Sec. 71, Ch. 411, L. 1991.

35-2-541. Other methods of electing directors. A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(1) on the basis of chapter or other organizational unit;

(2) by region or other geographic unit;

(3) by preferential voting; or

(4) by any other reasonable method.

History: En. Sec. 72, Ch. 411, L. 1991.

35-2-542. Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:

(a) the member is an entity and the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(b) the name signed purports to be that of an attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) two or more persons hold the membership as cotenants or fiduciaries and:

(i) the name signed purports to be the name of at least one of the coholders; and

(ii) the person signing appears to be acting on behalf of all the coholders; or

(d) in the case of a mutual benefit corporation:

(i) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(ii) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

History: En. Sec. 73, Ch. 411, L. 1991.

35-2-543. Voting agreements. (1) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Voting agreements may be valid for a period of up to 10 years. For public benefit corporations, voting agreements must have a reasonable purpose consistent with the corporation's public or charitable purposes.

(2) A voting agreement created under this section is specifically enforceable.

History: En. Sec. 74, Ch. 411, L. 1991.

Part 6
Merger, Consolidation, and Sale of Assets

35-2-601. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.

35-2-602. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.

35-2-603. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.

35-2-604. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341; amd. Sec. 42, Ch. 131, L. 1983.

35-2-605. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.

35-2-606. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.

35-2-607. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.

35-2-608. Approval of plan of merger. (1) Subject to the limitations set forth in 35-2-609, one or more nonprofit corporations may merge into a business or nonprofit corporation if the plan of merger is approved as provided in 35-2-610.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) the terms and conditions of the planned merger;

(c) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(d) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) other provisions relating to the planned merger.

History: En. Sec. 123, Ch. 411, L. 1991; amd. Sec. 5, Ch. 249, L. 1993.

35-2-609. Limitations on mergers by public benefit or religious corporations. (1) Except as provided in subsection (4) or without the prior approval of the district court for the judicial district in which the corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County, in a proceeding of which the attorney general has been given written notice, a public benefit corporation or religious corporation may merge only with:

(a) a public benefit corporation or religious corporation;

(b) a foreign corporation that would qualify under this chapter as a public benefit corporation or religious corporation;

(c) a wholly owned foreign or domestic business or mutual benefit corporation, if the public benefit corporation or religious corporation is the surviving corporation and continues to be a public benefit corporation or religious corporation after the merger; or

(d) a business or mutual benefit corporation, provided that:

(i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including good will, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under 35-2-725(1)(e) and (1)(f) had it dissolved;

(ii) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance in case of merger, in accordance with the condition; and

(iii) the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) At least 20 days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subsection (1)(d), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(3) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, a member of a public benefit corporation or religious corporation may not receive or keep anything as a result of a merger other than a membership in the surviving public benefit corporation or religious corporation. The court shall approve the transaction if it is in the public interest.

(4) A public benefit corporation or a religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of 35-2-617 and Title 50, chapter 4, part 7.

History: En. Sec. 124, Ch. 411, L. 1991; amd. Sec. 19, Ch. 214, L. 2005; amd. Sec. 42, Ch. 240, L. 2007.

35-2-610. Action on plan by board, members, and third persons. (1) Unless this chapter, the articles, the bylaws, or the board of directors or members, acting pursuant to subsection (3), require a greater vote or voting by class to be adopted, a plan of merger must be approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed merger.

(3) The board may condition its submission of the proposed merger and the members may condition their approval of the merger on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(5) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation

must include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation must include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(6) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under 35-2-224 or 35-2-231. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(7) After a merger is adopted and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if no procedure is set forth, in the manner determined by the board of directors.

History: En. Sec. 125, Ch. 411, L. 1991.

35-2-611. Articles of merger. After a plan of merger is approved by the board of directors and, if required by 35-2-610, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state, for filing, articles of merger setting forth:

(1) the plan of merger;

(2) if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) if approval by members was required:

(a) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(b) (i) either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class; and

(ii) a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) if approval of the plan by some person or persons other than the members or the board is required pursuant to 35-2-610(1)(c), a statement that the approval was obtained.

History: En. Sec. 126, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-612. Effect of merger. When a merger takes effect:

(1) every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) the title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment, subject to any conditions to which the property was subject prior to the merger;

(3) the surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) a proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) the articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

History: En. Sec. 127, Ch. 411, L. 1991.

35-2-613. Merger with foreign corporation. (1) Except as provided in 35-2-609, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(a) the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger; or

(b) the foreign corporation complies with 35-2-611 if it is the surviving corporation of the merger; and

(c) each domestic nonprofit corporation complies with the applicable provisions of 35-2-608 through 35-2-610 and, if it is the surviving corporation of the merger, with the provisions of 35-2-611.

(2) When the merger takes effect, the surviving foreign business or nonprofit corporation may be served with process in any proceeding brought against it as provided in 35-7-113.

History: En. Sec. 128, Ch. 411, L. 1991; amd. Sec. 43, Ch. 240, L. 2007.

Cross-References

Withdrawal of foreign corporation, 35-2-831.

35-2-614. Bequests, devises, and gifts. A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger inures to the surviving corporation unless the will or other instrument specifically provides otherwise.

History: En. Sec. 129, Ch. 411, L. 1991.

35-2-615 reserved.

35-2-616. Sale of assets in regular course of activities — mortgage of assets. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(b) mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property, whether or not in the usual and regular course of its activities.

(2) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (1) is not required.

(3) Unless the articles provide otherwise, approval of a transaction described in subsection (1)(a) is required by a vote of a majority of the directors in office at the time the transaction is approved.

History: En. Sec. 130, Ch. 411, L. 1991.

35-2-617. Sale of assets other than in regular course of activities. (1) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property, which may include the good will, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is approved as required by subsection (2).

(2) Unless this chapter, the articles, the bylaws, or the board of directors or members, acting pursuant to subsection (4), require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(a) by the board;

(b) by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(3) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice, in accordance with 35-2-429(3), of any directors' meeting at which approval is to be obtained. The notice must also state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(4) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(5) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed

membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and must contain or be accompanied by a copy or summary of a description of the transaction.

(6) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of a description of the transaction.

(7) (a) Except as provided in subsection (7)(b), a public benefit corporation or religious corporation shall give written notice to the attorney general 20 days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(b) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7.

(8) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if no procedure is set forth, in the manner determined by the board of directors.

History: En. Sec. 131, Ch. 411, L. 1991; amd. Sec. 20, Ch. 214, L. 2005.

Part 7
Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-2-701. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

35-2-702. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.

35-2-703. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.

35-2-704. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.

35-2-705. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349; amd. Sec. 43, Ch. 131, L. 1983.

35-2-706. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350; amd. Sec. 44, Ch. 131, L. 1983.

35-2-707 through 35-2-710 reserved.

35-2-711. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354; amd. Sec. 153, Ch. 575, L. 1981.

35-2-712. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.

35-2-713. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.

35-2-714. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.

35-2-715. Repealed. Sec. 174, Ch. 411, L. 1991.
History: En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.

35-2-716. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.

35-2-717. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.

35-2-718. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.

35-2-719. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.

35-2-720. Dissolution by incorporators or directors and third persons. (1) A majority of the incorporators or directors of a corporation that does not have members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(2) The corporation shall give notice of any meeting at which dissolution will be approved. The notice must be in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation.

(3) In approving dissolution, the incorporators or directors shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: En. Sec. 134, Ch. 411, L. 1991.

35-2-721. Dissolution by directors, members, and third persons. (1) Unless this chapter, the articles, bylaws, or the board of directors or members, acting pursuant to subsection (1)(c), require a greater vote or voting by class, dissolution is authorized if it is approved:

(a) by the board;

(b) by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(c) in writing, by any person or persons whose approval is required by a provision of the articles, as authorized by 35-2-232, for an amendment to the articles or bylaws.

(2) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which approval is to be obtained in accordance with 35-2-429(3). The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(3) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(4) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with 35-2-530. The notice must state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation and must contain or be accompanied by a copy or summary of the plan of dissolution.

(5) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval must contain or be accompanied by a copy or summary of the plan of dissolution.

(6) The plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

History: En. Sec. 135, Ch. 411, L. 1991.

35-2-722. Notices to attorney general. (1) Except as provided in subsection (4), a public benefit corporation or religious corporation shall give the attorney general written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice must include a copy or summary of the plan of dissolution.

(2) Assets may not be transferred or conveyed by a public benefit corporation or religious corporation as part of the dissolution process until 20 days after it has given the written notice required by subsection (1) to the attorney general or until the attorney general has consented in

writing to the dissolution or indicated in writing that the attorney general will not take action in respect to the transfer or conveyance, whichever is earlier.

(3) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list must indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

(4) A public benefit corporation or religious corporation that is considered a nonprofit health entity, as defined in 50-4-701, is subject to the provisions of Title 50, chapter 4, part 7.

History: En. Sec. 136, Ch. 411, L. 1991; amd. Sec. 21, Ch. 214, L. 2005; amd. Sec. 1286, Ch. 56, L. 2009.

35-2-723. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(a) the name of the corporation;

(b) the date dissolution was authorized;

(c) a statement that dissolution was approved by a sufficient vote of the board;

(d) if approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(e) if approval by members was required:

(i) the designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) (A) either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class; and

(B) a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(f) if approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to 35-2-721(1)(c), a statement that the approval was obtained; and

(g) if the corporation is a public benefit or religious corporation, that the notice to the attorney general required by 35-2-722(1) has been given.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

History: En. Sec. 137, Ch. 411, L. 1991.

Cross-References

Filing fees, 35-2-1003.

Appeal from refusal to file, 35-2-1110.

35-2-724. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) if member or third person action was required to revoke the dissolution, the information required by 35-2-723(1)(e) and (1)(f).

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation may resume carrying on its activities as if dissolution had never occurred.

History: **En. Sec. 138, Ch. 411, L. 1991.**

35-2-725. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(a) preserving and protecting its assets and minimizing its liabilities;

(b) discharging or making provision for discharging its liabilities and obligations;

(c) disposing of its properties that will not be distributed in kind;

(d) returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance in accordance with the condition;

(e) transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(f) if the corporation is a public benefit corporation or religious corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(i) to one or more persons described in section 501(c)(3) of the Internal Revenue Code; or

(ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit corporations or religious corporations;

(g) if the corporation is a mutual benefit corporation and provision has not been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it does not have members, to those persons whom the corporation holds itself out as benefiting or serving; and

(h) doing every other act necessary to wind up and liquidate its assets and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) subject its directors or officers to standards of conduct different from those prescribed in part 4 of this chapter;

(c) change quorum or voting requirements for its board or members; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(d) prevent commencement of a proceeding by or against the corporation in its corporate name;

(e) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(f) terminate the authority of the registered agent.

History: **En. Sec. 139, Ch. 411, L. 1991.**

Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.
Fees, 35-2-1003.
Appeal from refusal to file, 35-2-1110.

35-2-726. Known claims against dissolved corporation. (1) A dissolved corporation shall dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be fewer than 120 days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved corporation by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

History: **En. Sec. 140, Ch. 411, L. 1991.**

35-2-727. Unknown claims against dissolved corporations. (1) The dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or members for any claim or right, whether or not the claim or right existed or accrued prior to the dissolution. Any action or proceeding by or against the corporation referred to in this subsection may be prosecuted or defended by the corporation in its corporate name. Members, directors, and officers may take corporate or other action as is appropriate to protect a remedy, right, or claim.

(2) A claim may be enforced under 35-2-726 or this section:

(a) against the dissolved corporation to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved corporation to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less. However, a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to a foreign corporation transacting business in this state, and its members, for any claims otherwise arising or accruing under Montana law.

History: **En. Sec. 141, Ch. 411, L. 1991; amd. Sec. 1287, Ch. 56, L. 2009.**

35-2-728. Grounds for judicial dissolution. (1) The district court may dissolve a corporation:

(a) in a proceeding by the attorney general if it is established that:

(i) the corporation obtained its articles of incorporation through fraud;

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(iii) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(iv) the corporation is a public benefit corporation and is no longer able to carry out its purposes;

(b) in a proceeding by 50 members or members holding 5% of the voting power, whichever is less, or by a director or any person specified in the articles, except as provided in the articles or bylaws of a religious corporation, if it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the members, if any, are unable to breach the deadlock;

(ii) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(iii) the members are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have or would otherwise have expired;

(iv) the corporate assets are being misapplied or wasted; or

(v) the corporation is a public benefit corporation or religious corporation and is no longer able to carry out its purposes;

(c) in a proceeding by a creditor if it is established that:

(i) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(2) Prior to dissolving a corporation, the court shall consider whether:

(a) there are reasonable alternatives to dissolution;

(b) dissolution is in the public interest, if the corporation is a public benefit corporation; and

(c) dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

History: En. Sec. 142, Ch. 411, L. 1991.

Cross-References

Involuntary dissolution — procedure, 35-6-104.
Reinstatement of dissolved corporation, 35-6-201.

35-2-729. Procedure for judicial dissolution. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in the district court for the first judicial district. Venue for a proceeding brought by any other party named in 35-2-728 lies in the judicial district for the county where a corporation's principal office is or was last located or, if the principal office is not located in this state, in Lewis and Clark County.

(2) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) In a proceeding brought to dissolve a corporation, a court may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(4) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit corporation or religious corporation shall give written notice of the proceeding to the attorney general who may intervene.

History: En. Sec. 143, Ch. 411, L. 1991; amd. Sec. 44, Ch. 240, L. 2007.

35-2-730. Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a public benefit corporation or mutual benefit corporation may appoint one or more receivers to wind up and liquidate the affairs of the corporation or one or more custodians to manage the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint, as a receiver or custodian, an individual authorized to transact business in this state or a domestic or foreign business or nonprofit corporation authorized to transact business in this state. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may, if authorized by the court, dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, subject to any trust and other restrictions that would be applicable to the corporation; and

(ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state; and

(b) the custodian may exercise all the powers of the corporation through or in place of its board of directors or officers to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation, its members, and its creditors.

(5) From time to time during the receivership or custodianship, the court may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

History: En. Sec. 144, Ch. 411, L. 1991.

Cross-References

Receivers, Title 27, ch. 20.
Suretyship, Title 28, ch. 11, part 4.

35-2-731. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in 35-2-728 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with 35-2-725 and the notification of its claimants in accordance with 35-2-726 and 35-2-727.

History: En. Sec. 145, Ch. 411, L. 1991.

35-2-732. Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them must be reduced to cash, subject to known trust restrictions, and deposited with the state treasurer for safekeeping. However, in the state treasurer's discretion, property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, claimant, member, or other person as the creditor's, claimant's, or member's representative that amount or property.

History: En. Sec. 146, Ch. 411, L. 1991; amd. Sec. 1288, Ch. 56, L. 2009.

Part 8
Foreign Corporations

35-2-801. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-802. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-803. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.

35-2-804. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.

35-2-805. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365; amd. Sec. 7, Ch. 456, L. 1983.

35-2-806. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.

35-2-807. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367; amd. Sec. 45, Ch. 131, L. 1983.

35-2-808. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368; amd. Sec. 46, Ch. 131, L. 1983.

35-2-809. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.

35-2-810. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375; amd. Sec. 47, Ch. 131, L. 1983.

35-2-811. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.

35-2-812. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371; amd. Sec. 48, Ch. 131, L. 1983.

35-2-813. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.

35-2-814. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.

35-2-815. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.

35-2-816. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.

35-2-817. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377; amd. Sec. 49, Ch. 131, L. 1983.

35-2-818. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.

35-2-819. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379; amd. Sec. 8, Ch. 456, L. 1983.

35-2-820. Authority to transact business required. (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property:

(i) that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition; or

(ii) that does not produce income or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

History: En. Sec. 147, Ch. 411, L. 1991.

Cross-References

Fees, 35-2-1003.

35-2-821. Consequences of transacting business without authority. (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation, its successor, or its assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation, its successor, or its assignee obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

History: En. Sec. 148, Ch. 411, L. 1991.

Cross-References

Fee for certificate, 35-2-1003.

35-2-822. Application for certificate of authority. (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application must set forth:

(a) the name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of 35-2-826;

(b) the name of the state or country under whose law it is incorporated;

(c) the date of incorporation and period of duration;

(d) the business mailing address of its principal office;

(e) the information required by 35-7-105(1);

(f) the names and business mailing addresses of its current directors and officers;

(g) whether the foreign corporation has members;

(h) whether the corporation, if it had been incorporated in this state, would be a public benefit corporation, mutual benefit corporation, or religious corporation; and

(i) the purpose or purposes of the corporation that it proposes to pursue in the transaction of business in this state.

(2) The foreign corporation shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated.

History: En. Sec. 149, Ch. 411, L. 1991; amd. Sec. 45, Ch. 240, L. 2007; amd. Sec. 13, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) substituted "business mailing address" for "street address and, if different, the mailing address"; and in (1)(f) substituted "business mailing addresses" for "usual business or home addresses". Amendment effective October 1, 2011.

35-2-823. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its corporate name;

(b) the period of its duration;

(c) any of the information required by 35-7-105(1);

(d) the state or country of its incorporation; or

(e) its designation as a public benefit corporation, mutual benefit corporation, or religious corporation.

(2) The requirements of 35-2-822 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 150, Ch. 411, L. 1991; amd. Sec. 46, Ch. 240, L. 2007.

35-2-824. Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued the right to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

(2) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of a similar character and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of a similar character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

History: En. Sec. 151, Ch. 411, L. 1991.

35-2-825 reserved.

35-2-826. Corporate name of foreign corporation. (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823.

History: En. Sec. 152, Ch. 411, L. 1991; amd. Sec. 176, Ch. 411, L. 1991; amd. Sec. 86, Ch. 120, L. 1993.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Trademarks and service marks, Title 30, ch. 13, part 3.
Business corporation — corporate name, Title 35, ch. 1, part 3.
Foreign corporation — corporate name, 35-1-1031.
Nonprofit corporation — corporate name, 35-2-305.
Fees, 35-2-1003.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

35-2-827. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 153, Ch. 411, L. 1991.

35-2-828. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 154, Ch. 411, L. 1991.

35-2-829. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 155, Ch. 411, L. 1991.

35-2-830. Service of process on foreign corporations. Service of process on a foreign corporation must be effected upon the persons and in the manner provided for by the Montana Rules of Civil Procedure.

History: En. Sec. 156, Ch. 411, L. 1991.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-2-831. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) the fact that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) the fact that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (2)(c); and

(e) a commitment to notify the secretary of state, in the future, of any change in the mailing address.

History: En. Sec. 157, Ch. 411, L. 1991; amd. Sec. 1289, Ch. 56, L. 2009.

35-2-832. Grounds for revocation. (1) The secretary of state may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the foreign corporation does not deliver the annual report to the secretary of state within 90 days after it is due;

(b) the foreign corporation does not pay within 90 days after they are due any franchise taxes or penalties imposed by this chapter or other law;

(c) the foreign corporation is without a registered agent in this state for 90 days or more;

(d) the foreign corporation does not inform the secretary of state by an appropriate filing that its registered agent has changed or resigned within 90 days of the change or resignation;

(e) an incorporator, director, officer, or agent of the foreign corporation signed a document that the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing; or

(f) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated and the certificate states that the foreign corporation has been dissolved or disappeared as the result of a merger.

(2) The attorney general may commence a proceeding under 35-2-833 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(a) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(b) the corporation is designated as a foreign public benefit corporation and its corporation assets in this state are being misapplied or wasted; or

(c) the corporation is designated as a foreign public benefit corporation and it is no longer able to carry out its purpose.

History: En. Sec. 158, Ch. 411, L. 1991; amd. Sec. 47, Ch. 240, L. 2007.

35-2-833. Procedure for and effect of revocation. (1) The secretary of state, upon determining that one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall mail to the foreign corporation written notice of that determination under 35-2-830.

(2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under 35-2-830.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after mailing the notice or after service of the notice is perfected under 35-2-830, the secretary of

state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

History: En. Sec. 159, Ch. 411, L. 1991; amd. Sec. 6, Ch. 249, L. 1993.

Cross-References

Appeal of failure to file certificate, 35-2-1110.

35-2-834. Appeal from revocation. (1) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court for the first judicial district within 30 days after the service of the certificate of revocation is perfected under 35-2-830. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 160, Ch. 411, L. 1991.

Part 9
Annual Report — Corporate Records

35-2-901. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381; amd. Sec. 2, Ch. 153, L. 1989.

35-2-902. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.

35-2-903. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.

35-2-904. Annual report for secretary of state. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report on a form prescribed and furnished by the secretary of state that sets forth:

(a) the name of the corporation and the jurisdiction under whose law it is incorporated;
(b) the information required by 35-7-105(1);
(c) the business mailing address of its principal office, wherever located;
(d) the names and business mailing addresses of its directors and principal officers;
(e) a brief description of the nature of its activities; and
(f) whether or not it has members.

(2) The information in the annual report must be current on the date the annual report is executed on behalf of the corporation.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of notice, it is considered to be timely filed.

History: En. Sec. 168, Ch. 411, L. 1991; amd. Sec. 48, Ch. 240, L. 2007; amd. Sec. 14, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(c) before "address" inserted "business mailing"; and in (1)(d) substituted "business mailing addresses" for "business or residence addresses". Amendment effective October 1, 2011.

35-2-905 reserved.

35-2-906. Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to members for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904.

History: En. Sec. 161, Ch. 411, L. 1991; amd. Sec. 57, Ch. 10, L. 1993.

35-2-907. Inspection of records by members. (1) Subject to 35-2-908(3) and subsection (5) of this section, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in 35-2-906(5) if the member gives the corporation written notice or a written demand at least 5 business days before the date on which the member wishes to inspect and copy.

(2) Subject to subsection (5), a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (3) and gives the corporation written notice at least 5 business days before the date on which the member wishes to inspect and copy:

(a) excerpts from any records required to be maintained under 35-2-906(1), to the extent not subject to inspection under subsection (1);

(b) accounting records of the corporation; and

(c) subject to 35-2-910, the membership list.

(3) A member may inspect and copy the records identified in subsection (2) only if:

(a) the member's demand is made in good faith and for a proper purpose;

(b) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(c) the records are directly connected with this purpose.

(4) This section does not affect:

(a) the right of a member to inspect records under 35-2-535 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of corporate records for examination.

(5) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

History: En. Sec. 162, Ch. 411, L. 1991.

35-2-908. Scope of inspection rights. (1) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(2) The right to copy records under 35-2-907 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a member's demand to inspect the record of members under 35-2-907(2)(c) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

History: En. Sec. 163, Ch. 411, L. 1991.

35-2-909. Court-ordered inspection. (1) If a corporation does not allow a member who complies with 35-2-907(1) to inspect and copy any records required by that subsection to be available for inspection, the district court for the judicial district of the county where the corporation's principal office is located or, if none in this state, in Lewis and Clark County may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(2) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with 35-2-907(2) and (3) may apply to the district court for the judicial district of the county where the corporation's principal office is located or, if the principal office is not located in this state, in Lewis and Clark County for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

History: En. Sec. 164, Ch. 411, L. 1991; amd. Sec. 49, Ch. 240, L. 2007.

35-2-910. Limitations on use of membership list. (1) Without consent of the board, a membership list or any part of it may not be obtained or used by a person for any purpose unrelated to a member's interest as a member.

(2) Without limiting the generality of the provisions of subsection (1), without the consent of the board a membership list or any part of it may not be:

(a) used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(b) used for any commercial purpose; or

(c) sold to or purchased by any person.

History: En. Sec. 165, Ch. 411, L. 1991.

35-2-911. Financial statements for members. Upon the written request of any member of the corporation, the corporation shall mail to the member its most recent financial statements showing in reasonable detail its assets and liabilities and the results of the operations.

History: En. Sec. 166, Ch. 411, L. 1991.

35-2-912. Report of indemnification to members. If a corporation indemnifies or advances expenses to a director under 35-2-447 through 35-2-450 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

History: En. Sec. 167, Ch. 411, L. 1991.

Part 10
Fees and Charges

35-2-1001. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979; amd. Sec. 7, Ch. 119, L. 1985.

35-2-1002. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.

35-2-1003. Fees for filing, copying, and services. (1) The secretary of state shall establish fees for the following:

(a) filing documents and issuing certificates as required by this chapter; and

(b) copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(2) The fees authorized in this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 7, Ch. 411, L. 1991; amd. Sec. 19, Ch. 396, L. 2001.

Cross-References

Fees relating to business corporations, 35-1-1206.

Certification of existence, 35-2-1112.

Part 11
Secretary of State

35-2-1101. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.

35-2-1102. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.

35-2-1103. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.

35-2-1104. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).

35-2-1105. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.

35-2-1106. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 1, Ch. 256, L. 1981.

35-2-1107. Secretary of state — powers — rulemaking. (1) The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state's office by this chapter.

(2) The secretary of state may adopt rules to perform the duties required of the secretary of state under this chapter, including establishing necessary fees.

History: En. Sec. 15, Ch. 411, L. 1991.

35-2-1108. Forms. (1) The secretary of state may by rule prescribe and furnish on request forms or computer formats for:

(a) an application for a certificate of existence;

(b) a foreign corporation's application for a certificate of authority to transact business in this state;

(c) a foreign corporation's application for a certificate of withdrawal;

(d) the annual report; and

(e) other documents required or permitted to be filed by this chapter.

(2) If the secretary of state so requires, use of any of the forms or formats listed in subsection (1) is mandatory.

(3) The secretary of state may by rule prescribe and furnish on request forms or computer formats for other documents required or permitted to be filed by this chapter, but their use is not mandatory.

History: En. Sec. 6, Ch. 411, L. 1991.

35-2-1109. Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the applicable requirements of 35-2-119 and 35-2-120, the secretary of state shall file the document.

(2) The secretary of state shall file a document by stamping or otherwise endorsing on the document "Filed", the secretary of state's official title, and the date and time the secretary of state received the document. Except as provided in 35-2-830, after filing a document, the secretary of state shall deliver a certification letter to the domestic or foreign corporation or its representative as acknowledgment that the document has been filed and the fee has been paid.

(3) If the secretary of state refuses to file a document, the secretary of state shall return the document to the domestic or foreign corporation or its representative within 10 business days after the document was delivered to the secretary of state and include a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty concerning the documents under this section is ministerial. Filing or refusal to file a document does not:

(a) affect the validity or invalidity of the document in whole or in part;

(b) relate to the correctness or incorrectness of information contained in the document; or

(c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(5) The secretary of state may correct errors caused by a filing officer. The error and the correction must be retained in the file containing the document in which the error appeared. For the purposes of this subsection, a filing officer is a person employed in a filing office as defined in 30-9A-102.

History: En. Sec. 10, Ch. 411, L. 1991; amd. Sec. 8, Ch. 71, L. 2005; amd. Sec. 7, Ch. 33, L. 2007; amd. Sec. 50, Ch. 240, L. 2007.

35-2-1110. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered for filing to the secretary of state's office, the domestic or foreign corporation may appeal the refusal to the district court for the first judicial district. The appeal is commenced by petitioning the court to compel the filing of the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(2) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 11, Ch. 411, L. 1991.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-2-1111. Evidentiary effect of copy of filed document. A certificate attached to a copy of a document, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

History: En. Sec. 12, Ch. 411, L. 1991.

Cross-References

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Admissibility of duplicates — copies of certain entries, Rule 1003, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

35-2-1112. Certificate of existence. (1) A person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(2) The certificate of existence must set forth:

(a) the domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(b) (i) that the domestic corporation is incorporated under the laws of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(ii) that the foreign corporation is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the secretary of state; and

(ii) nonpayment affects the good standing of the domestic or foreign corporation;

(d) that its most recent annual report required by 35-2-904 has been delivered to the secretary of state;

(e) that articles of dissolution have not been filed; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of existence issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

History: En. Sec. 13, Ch. 411, L. 1991.

Part 12
Reinstatement
(Repealed)

35-2-1201. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 2, Ch. 256, L. 1981; amd. Sec. 50, Ch. 131, L. 1983; amd. Sec. 29, Ch. 174, L. 1983.

35-2-1202. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 3, Ch. 256, L. 1981.

35-2-1203. Repealed. Sec. 174, Ch. 411, L. 1991.

History: En. Sec. 4, Ch. 256, L. 1981.

Part 13
Derivative Actions

35-2-1301. Standing. (1) For purposes of this part, “derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in 35-2-1307, in the right of a foreign corporation.

(2) A derivative proceeding may be commenced or maintained by a complainant who is:

(a) a director at the time of the bringing of the proceeding; or

(b) a member or members having 5% or more of the voting power or by 50 members, whichever is less. Each member must be a member at the time of the proceeding, including the time of the complained act or omission.

History: En. Sec. 50, Ch. 411, L. 1991.

35-2-1302. Demand. A complainant may not commence a derivative proceeding until:

(1) a written demand has been made upon the corporation to take suitable action;

(2) 90 days have expired from the date the demand was made, unless the complainant has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period; and

(3) the complainant has notified the attorney general prior to commencing a proceeding if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. Notification of the attorney general must be made by mailing the attorney general a copy of the complaint.

History: En. Sec. 51, Ch. 411, L. 1991.

35-2-1303. Stay of proceedings. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for any period the court considers appropriate.

History: En. Sec. 52, Ch. 411, L. 1991.

35-2-1304. Dismissal. (1) The court shall dismiss a derivative proceeding on motion by the corporation if one of the groups specified in subsection (2) or (6) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6), the determination in subsection (1) must be made by:

(a) a majority vote of independent directors present at a meeting of the board of directors if independent directors constitute a quorum; or

(b) a majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constitute a quorum.

(3) None of the following may by itself cause a director to be considered not independent for purposes of this section:

(a) the nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) the naming of the director as a defendant in the derivative proceeding or as a defendant against whom action is demanded; or

(c) the approval by the director of the act being challenged in the derivative proceeding or demand if the act did not result in personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a complainant, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection (1) have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection (1) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the complainant has the burden of proving that the requirements of subsection (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to make a determination of whether the maintenance of the derivative proceeding is in the best interests of the corporation. In this case, the plaintiff has the burden of proving that the requirements of subsection (1) have not been met.

History: En. Sec. 53, Ch. 411, L. 1991.

35-2-1305. Discontinuance or settlement — notice. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's members or a class of members, the court shall direct that notice be given to the members affected.

History: En. Sec. 54, Ch. 411, L. 1991.

35-2-1306. Payment of expenses. On termination of the derivative proceeding, the court may order:

(1) the corporation to pay the complainant's reasonable expenses, including attorney fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation; or

(2) the complainant to pay any defendant's reasonable expenses, including attorney fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

History: En. Sec. 55, Ch. 411, L. 1991.

35-2-1307. Applicability to foreign corporations. In a derivative proceeding in the right of a foreign corporation, the matter covered by this part is governed by the laws of the jurisdiction of incorporation of the foreign corporation, except for 35-2-1303, 35-2-1305, and 35-2-1306.

History: En. Sec. 56, Ch. 411, L. 1991.

Part 14
Distributions

35-2-1401. Prohibited distributions — permitted transactions. (1) Except as authorized by 35-2-1402, a corporation may not make any distributions.

(2) A public benefit corporation may, subject to the requirements of Title 15, chapter 31, and this chapter, as applicable:

(a) pay reasonable compensation or reimburse reasonable expenses to members, directors, or officers for services rendered; and

(b) confer benefits upon or make contributions to members in conformity with its charitable purposes if after the transaction is completed:

(i) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(ii) the corporation's total assets would at least equal the sum of its total liabilities.

History: En. Sec. 132, Ch. 411, L. 1991; amd. Sec. 1, Ch. 135, L. 2007.

35-2-1402. Authorized distributions. (1) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(a) the corporation would be able to pay its debts as they become due in the usual course of its activities; and

(b) the corporation's total assets would at least equal the sum of its total liabilities.

(2) Corporations may make distributions upon dissolution in conformity with part 7 of this chapter.

History: En. Sec. 133, Ch. 411, L. 1991.

CHAPTER 3
RELIGIOUS CORPORATIONS SOLE

Part 1 — General

35-3-101. Short title.
35-3-102. Applicability.
35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred.

Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
35-3-202. Articles of incorporation.
35-3-203. Effect of issuance of certificate of incorporation.
35-3-204. Unauthorized assumption of corporate powers — liability.
35-3-205. Powers of corporation sole.
35-3-206. Amendment of articles of incorporation.
35-3-207. Succession.
35-3-208. Board of advisors or consultors — interim powers.
35-3-209. Annual report.
35-3-210. Registered agent — corporate office.

Chapter Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.
Montana Nonprofit Corporation Act, Title 35, ch. 2.

Part 1
General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".

History: En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).

Cross-References

Montana Nonprofit Corporation Act, Title 35, ch. 2.
Nonprofit foreign corporations, Title 35, ch. 2, part 8.
Management of institutional funds, Title 72, ch. 30.

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.

Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Part 2
Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.

35-3-202. Articles of incorporation. (1) The articles of incorporation must set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which that person presides or over which that person's jurisdiction extends and the facts authorizing the incorporation;

(e) the manner in which any vacancy occurring in the incumbency of the bishop, chief priest, or presiding elder, as required by the rules or discipline of the religious denomination, society, or church, must be filled;

(f) any provisions, not inconsistent with law, that the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its principal office and the information specified by 35-7-105(1);

(h) the name and address of the incorporator.

(2) It is not necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles must be verified by affidavit of the incorporator, and the incorporator shall also file the original or a copy or translation of the incorporator's commission, certificate, or letters of appointment as bishop, chief priest, or presiding elder, duly attested, and the incorporator's affidavit that the document is a true copy or translation must be considered as sufficient attestation.

History: En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404; amd. Sec. 51, Ch. 240, L. 2007.

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust described in this section, has power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain, and defend in its corporate name;

(3) to have a corporate seal that may be altered at pleasure and to use the seal by causing it or a facsimile to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest in real or personal property, wherever situated, provided that all property must be in trust for the use, purpose, and benefit of the religious denomination, society, or church for which and in whose behalf the corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality of a governmental entity;

(8) to make contracts and incur liabilities, borrow money at rates of interest that the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by the person in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which the person is made a party by reason of being or having been a director or officer, except in relation to matters as to which the person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation, and to make any other indemnification that is authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or the incorporator's successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406; amd. Sec. 1290, Ch. 56, L. 2009.

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.
Securities Act of Montana, Title 30, ch. 10.
Exempt securities, 30-10-104.

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder has filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments to that act or under this chapter, the corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired as long as its articles of incorporation as amended contain only provisions that are lawful under this chapter.

(2) The articles of amendment must be promulgated by the incorporator or a successor by setting forth a statement of the facts authorizing the amendment and the date upon which the amendment was promulgated, and the incorporator's or successor's affidavit that the amendment is a true copy or translation of the amendment is considered a sufficient attestation.

History: En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410; amd. Sec. 1291, Ch. 56, L. 2009.

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of that individual's transfer or removal from office by the person or body having the authority to remove that individual, the individual's successor in office succeeds to the powers, rights, and obligations of the office and becomes vested with the title to the property with like power and authority over the property and subject to all the legal liabilities and obligations with reference to the property.

(2) Succession is effected when the successor files in the office of the secretary of state the original or a copy or translation of the successor's commission, certificate, or letters of appointment as bishop, chief priest, or presiding elder, duly attested, and the successor's affidavit that the document is a true copy or translation is considered sufficient attestation of the document.

History: En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407; amd. Sec. 1292, Ch. 56, L. 2009.

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the business mailing address of the principal office of the corporation, wherever located, and the information specified by 35-7-105(1);

(c) the names and business mailing addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.

History: En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409; amd. Sec. 3, Ch. 153, L. 1989; amd. Sec. 52, Ch. 240, L. 2007; amd. Sec. 15, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(b) before "address" inserted "business mailing"; and in (1)(c) substituted "business mailing addresses" for "respective addresses". Amendment effective October 1, 2011.

Cross-References

Corporations subject to provision, 35-3-102.

35-3-210. Registered agent — corporate office. A corporation sole organized under the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered agent as provided in 35-7-105(1).

History: En. Sec. 16, Ch. 229, L. 1999; amd. Sec. 53, Ch. 240, L. 2007.

CHAPTER 4
MONTANA PROFESSIONAL CORPORATION ACT

Part 1 — General

35-4-101. Repealed.
35-4-102. Repealed.
35-4-103. Repealed.
35-4-104. Repealed.
35-4-105. Repealed.
35-4-106. Repealed.
35-4-107. Repealed.
35-4-108. Short title.
35-4-109. Definitions.
35-4-110. Application to existing corporations.
35-4-111. Application of the Montana Business Corporation Act.

Part 2 — Organization and Regulation

35-4-201. Repealed.
35-4-202. Repealed.
35-4-203. Repealed.
35-4-204. Repealed.
35-4-205. Purposes of corporation.
35-4-206. Corporate name.
35-4-207. Directors and officers.
35-4-208. Filing of articles with licensing authority.
35-4-209. Annual reports and statements.
35-4-210 reserved.
35-4-211. Repealed.
35-4-212. Repealed.
35-4-213. Repealed.
35-4-214. Repealed.
35-4-215. Repealed.
35-4-216. Repealed.

Part 3 — Shares and Shareholders

35-4-301. Issuance and transfer of shares.
35-4-302. Corporation's right to acquire its own shares.
35-4-303. Proxies and voting trusts.
35-4-304 through 35-4-310 reserved.
35-4-311. Death or disqualification of a shareholder.
35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate.

Part 4 — Operation

35-4-401. General powers.
35-4-402. Prohibited activities.
35-4-403. Rendering services.
35-4-404. Responsibility for services.
35-4-405. Relationship to clients or patients — privileged communications.
35-4-406 through 35-4-410 reserved.
35-4-411. Admission of foreign professional corporations — application — revocation.

Part 5 — Reorganization and Dissolution

35-4-501. Merger and consolidation.
35-4-502. Termination of all professional services.
35-4-503. Involuntary dissolution.

Chapter Cross-References

Professional and occupational licensing, Title 37.

Part 1
General

35-4-101. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.

35-4-102. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.

35-4-103. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.

35-4-104. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.

35-4-105. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-106. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.

35-4-107. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.

35-4-108. Short title. This chapter may be cited as the "Montana Professional Corporation Act".
History: En. Sec. 1, Ch. 399, L. 1983.

35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation.
History: En. Sec. 2, Ch. 399, L. 1983.

Cross-References
Professions and Occupations, Title 37.

35-4-110. Application to existing corporations. (1) This chapter applies to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to this chapter by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendments of its corporate name or purposes as are required to comply with this chapter.
History: En. Sec. 3, Ch. 399, L. 1983.

35-4-111. Application of the Montana Business Corporation Act. The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with this chapter.
History: En. Sec. 4, Ch. 399, L. 1983.

Part 2
Organization and Regulation

Part Cross-References
Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.
Montana Limited Liability Company Act, Title 35, ch. 8.
Registration of limited liability partnerships, Title 35, ch. 10, part 7.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-4-201. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112; amd. Sec. 154, Ch. 575, L. 1981.

35-4-202. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.

35-4-203. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.

35-4-204. Repealed. Sec. 24, Ch. 399, L. 1983.
History: En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.

35-4-205. Purposes of corporation. Professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.
History: En. Sec. 6, Ch. 399, L. 1983.

35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) (a) (i) except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; and

(ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of the other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make the name distinguishable from the other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.
History: En. Sec. 12, Ch. 399, L. 1983; amd. Sec. 87, Ch. 120, L. 1993; amd. Sec. 7, Ch. 249, L. 1993; amd. Sec. 5, Ch. 27, L. 2001.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
Assumed business names, trademarks, and related rights, Title 30, ch. 13.
Service of process on foreign corporation, 35-1-1034.
Professions and Occupations, Title 37.

35-4-207. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

History: En. Sec. 13, Ch. 399, L. 1983.

35-4-208. Filing of articles with licensing authority. No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in this chapter restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

History: En. Sec. 5, Ch. 399, L. 1983.

35-4-209. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 23, Ch. 399, L. 1983.

35-4-210 reserved.

35-4-211. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. Repealed. Sec. 24, Ch. 399, L. 1983.

History: En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

Part 3
Shares and Shareholders

35-4-301. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

History: En. Sec. 14, Ch. 399, L. 1983.

Cross-References

Duties of licensing and regulatory boards, 37-1-131.

35-4-302. Corporation's right to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

History: En. Sec. 15, Ch. 399, L. 1983.

35-4-303. Proxies and voting trusts. No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

History: En. Sec. 18, Ch. 399, L. 1983.

35-4-304 through 35-4-310 reserved.

35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after the death or 30 days after the disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within another period that the parties fix by agreement and upon surrender of the certificate or certificates representing the shares. Upon payment the transferor ceases to have any interest in the shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation shall within the next 30 days file a petition in the district court of the county in this state where the principal office of the corporation is located or, if the principal office is not located in this state, in Lewis and Clark County, requesting that the fair value of the shares be found and

determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of the person's shares as of the date of death, disqualification, or transfer and upon payment of the judgment shall surrender to the corporation the certificates representing the shares. The court may order that judgment be paid in installments determined by the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than the right under this section to payment for the shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

History: En. Sec. 16, Ch. 399, L. 1983; amd. Sec. 54, Ch. 240, L. 2007.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate. A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;
(2) the amendments adopted;
(3) the date of adoption of the amendments; and
(4) the number of shares outstanding.

History: En. Sec. 17, Ch. 399, L. 1983.

Part 4
Operation

35-4-401. General powers. (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

History: En. Sec. 8, Ch. 399, L. 1983.

35-4-402. Prohibited activities. A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

History: En. Sec. 7, Ch. 399, L. 1983.

35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render the services in this state. However, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in an individual capacity, even if the person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

History: En. Sec. 9, Ch. 399, L. 1983; amd. Sec. 1293, Ch. 56, L. 2009.

35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of the employee's employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

History: En. Sec. 10, Ch. 399, L. 1983; amd. Sec. 1294, Ch. 56, L. 2009.

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Disciplinary authority of licensing and regulatory boards — injunctions, 37-1-136.

35-4-405. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

History: En. Sec. 11, Ch. 399, L. 1983.

Cross-References

Privileges, Title 26, ch. 1, part 8.

35-4-406 through 35-4-410 reserved.

35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) A foreign professional corporation is not required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent to the cause, and shall concurrently mail to each corporation through its registered agent a notice that the certification has been made. A certificate of authority of a foreign professional corporation may not be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

History: En. Sec. 22, Ch. 399, L. 1983; amd. Sec. 55, Ch. 240, L. 2007.

Part 5
Reorganization and Dissolution

35-4-501. Merger and consolidation. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with this chapter.

History: En. Sec. 19, Ch. 399, L. 1983.

35-4-502. Termination of all professional services. If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to this chapter.

History: En. Sec. 20, Ch. 399, L. 1983.

35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

History: En. Sec. 21, Ch. 399, L. 1983.

CHAPTER 5
BUSINESS TRUSTS

Part 1 — General

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.
35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Chapter Cross-References

Agency, Title 28, ch. 10.

Trust Code, Title 72, ch. 33 through 36.

Part 1
General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.

Cross-References

General corporate law, Title 35, ch. 1.

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.

Part 2
Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1028 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and

other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2); amd. Sec. 194, Ch. 368, L. 1991.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Service of process on foreign corporation, 35-1-1034.

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay the taxes and fees imposed by the laws, ordinances, and regulations of this state and its counties and municipalities on domestic and foreign corporations. Fees charged by the secretary of state pursuant to this chapter must be set and deposited in accordance with 2-15-405.

History: En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507; amd. Sec. 20, Ch. 396, L. 2001.

Cross-References

Corporate license tax, Title 15, ch. 31, part 1.
Corporate income tax — generally, Title 15, ch. 31, part 4.

CHAPTER 6
INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement
35-6-201. Reinstatement of dissolved corporation — fee.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Part 1
Dissolution by Secretary of State

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused the authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered agent to file in the office of the secretary of state a statement of the change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c), the secretary of state may dissolve the corporation only when that fact is established by an order of the district court. In addition to other persons authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701; amd. Sec. 56, Ch. 240, L. 2007.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by:

(a) mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve defaulting corporations;

(b) defaulting corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2).

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation must be held in trust by the directors of the corporation and 35-1-938 through 35-1-943 or 35-2-729, whichever is appropriate, is applicable to liquidate the property and assets if necessary.

History: En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979; amd. Secs. 183, 195, Ch. 368, L. 1991; amd. Sec. 171, Ch. 411, L. 1991.

Part 2
Reinstatement

35-6-201. Reinstatement of dissolved corporation — fee. (1) The secretary of state may:

(a) reinstate any corporation that has been dissolved under the provisions of this chapter; and

(b) restore to the corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-938 through 35-1-943 or 35-2-726 and 35-2-727;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid;

(b) a filing fee, which must be set and deposited by the secretary of state in accordance with 2-15-405; and

(c) all annual reports not yet filed with the secretary of state.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, the secretary of state shall:

(a) conform and file in the secretary of state's office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation that is reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979; amd. Sec. 51, Ch. 131, L. 1983; amd. Sec. 30, Ch. 174, L. 1983; amd. Sec. 196, Ch. 368, L. 1991; amd. Sec. 172, Ch. 411, L. 1991; amd. Sec. 21, Ch. 396, L. 2001; amd. Sec. 12, Ch. 75, L. 2003.

Cross-References

State tax clearance certificate, 35-1-944.

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Business corporation — corporate name, Title 35, ch. 1, part 3.
Business trust name, 35-5-201.

CHAPTER 7
MODEL REGISTERED AGENTS ACT

Part 1 — Registered Agents

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Part 1
Registered Agents

35-7-101. Short title. This chapter may be cited as the "Model Registered Agents Act".

History: En. Sec. 1, Ch. 240, L. 2007.

35-7-102. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Appointment of agent" means a statement appointing an agent for service of process filed by:

(a) a domestic or foreign unincorporated nonprofit association; or

(b) a domestic entity that is not a filing entity or a nonqualified foreign entity under 35-7-112.

(2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under 35-7-106.

(3) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.

(4) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

(a) an individual;

(b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(c) an association or relationship that is not a partnership by reason of 35-10-202(3) or a similar provision of the law of any other jurisdiction;

(d) a decedent's estate; or

(e) a public corporation, government, governmental subdivision, agency, instrumentality, or quasi-governmental instrumentality.

(5) "Filing entity" means an entity that is created by the filing of a public organic document.

(6) "Foreign entity" means an entity other than a domestic entity.

(7) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.

(8) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning or to the books and records of the entity;

(b) vote for the election of the governors of the entity; or

(c) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(9) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(10) "Interest" means:

(a) a governance interest in an unincorporated entity;

(b) a transferable interest in an unincorporated entity; or

(c) a share or membership in a corporation.

(11) "Interest holder" means a direct holder of an interest.

(12) "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(13) "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under 35-7-106 and that is an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity.

(14) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.

(15) "Nonresident LLP statement" means:

(a) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(b) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(16) "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(17) "Organic rules" means the public organic document and private organic rules of an entity.

(18) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity.

(19) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(20) "Public organic document" means the public record that when filed creates an entity and any amendment to or restatement of that record.

(21) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.

(22) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(23) "Registered agent" means a commercial registered agent or a noncommercial registered agent.

(24) "Registered agent filing" means:

(a) the public organic document of a domestic filing entity;

(b) a nonresident LLP statement;

(c) a foreign qualification document; or

(d) an appointment of agent.

(25) "Represented entity" means:

(a) a domestic filing entity;

(b) a domestic or qualified foreign limited liability partnership that does not have an office in this state;

(c) a qualified foreign entity;

(d) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;

(e) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or

(f) a nonqualified foreign entity for which an appointment of agent has been filed.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(27) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(28) "Type", with respect to an entity, means a generic form of entity:

(a) recognized at common law; or

(b) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

History: En. Sec. 2, Ch. 240, L. 2007.

35-7-103. Fees. The secretary of state shall by rule set fees for filings and the services provided under this chapter.

History: En. Sec. 3, Ch. 240, L. 2007.

35-7-104. Addresses in filings. Whenever a provision of this chapter other than 35-7-111(1)(d) requires that a filing state an address, the filing must state:

(1) an actual street address or rural route box number in this state; and

(2) a mailing address in this state, if different from the address under subsection (1).

History: En. Sec. 4, Ch. 240, L. 2007.

35-7-105. Appointment of registered agent. (1) A registered agent filing must state:

(a) the name of the represented entity's commercial registered agent; or

(b) if the entity does not have a commercial registered agent, the name and address of the entity's noncommercial registered agent.

(2) The appointment of a registered agent pursuant to subsection (1)(a) or (1)(b) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(3) The secretary of state shall notify the registered agent as soon as practicable of filings that contain the name of the registered agent. The list must:

(a) be available for at least 14 calendar days; and

(b) state the type of filing and name of the represented entity making the filing.

History: En. Sec. 5, Ch. 240, L. 2007.

35-7-106. Listing of commercial registered agent. (1) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person that states:

(a) the name of the individual or the name, type, and jurisdiction of organization of the entity;

(b) that the person is in the business of serving as a commercial registered agent in this state; and

(c) the address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

(2) If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(3) A commercial registered agent listing statement takes effect on filing.

(4) The secretary of state shall note the filing of the commercial registered agent listing statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

History: **En. Sec. 6, Ch. 240, L. 2007.**

35-7-107. Termination of listing of commercial registered agent. (1) A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under 35-7-106; and

(b) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(2) A commercial registered agent termination statement takes effect on the 31st day after the day on which it is filed.

(3) The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.

(4) When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in 35-7-113. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

History: **En. Sec. 7, Ch. 240, L. 2007.**

35-7-108. Change of registered agent by entity. (1) A represented entity may change the information currently on file under 35-7-105(1) by filing with the secretary of state a statement of change signed on behalf of the entity that states:

(a) the name of the entity; and

(b) the information that is to be in effect as a result of the filing of the statement of change.

(2) The interest holders or governors of a domestic entity need not approve the filing of:

(a) a statement of change under this section; or

(b) a similar filing changing the registered agent or registered office of the entity in any other jurisdiction.

(3) The appointment of a registered agent pursuant to subsection (1) is an affirmation by the represented entity that the agent has consented to serve as a registered agent.

(4) A statement of change filed under this section takes effect on filing.

(5) As an alternative to using the procedures in this section, a represented entity may change the information currently on file under 35-7-105(1) by amending its most recent registered agent filing in the manner provided by the laws of this state other than this chapter for amending that filing.

History: **En. Sec. 8, Ch. 240, L. 2007.**

35-7-109. Change of name or address by noncommercial registered agent. (1) If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to 35-7-105(1), the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name and address of the agent as currently in effect with respect to the entity;

(c) if the name of the agent has changed, its new name; and

(d) if the address of the agent has changed, the new address.

(2) A statement of change filed under this section takes effect on filing.

(3) A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

History: En. Sec. 9, Ch. 240, L. 2007.

35-7-110. Change of name, address, or type of organization by commercial registered agent. (1) If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under 35-7-106(1), or its type or jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent that states:

(a) the name of the agent as currently listed under 35-7-106(1);

(b) if the name of the agent has changed, its new name;

(c) if the address of the agent has changed, the new address; and

(d) if the type or jurisdiction of organization of the agent has changed, the new type or jurisdiction of organization.

(2) The filing of a statement of change under subsection (1) is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.

(3) A statement of change filed under this section takes effect on filing.

(4) A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.

(5) If a commercial registered agent changes its address without filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under 35-7-106. A cancellation under this subsection has the same effect as a termination under 35-7-107. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in 35-7-113(2) or (3) on:

(a) each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in 35-7-113; and

(b) the agent, stating that the listing of the agent has been canceled under this section.

(6) The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of filing.

History: En. Sec. 10, Ch. 240, L. 2007.

35-7-111. Resignation of registered agent. (1) A registered agent may resign at any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed by or on behalf of the agent that states:

(a) the name of the entity;

(b) the name of the agent;

(c) that the agent resigns from serving as agent for service of process for the entity; and

(d) the name and address of the person to which the agent will send the notice required by subsection (3).

(2) A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

(3) The registered agent shall promptly furnish the represented entity notice in a record of the date on which a statement of resignation was filed.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation

under this section does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(5) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

History: **En. Sec. 11, Ch. 240, L. 2007.**

35-7-112. Appointment of agent by nonfiling or nonqualified foreign entity. (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity that states:

(a) the name, type, and jurisdiction of organization of the entity; and

(b) the information required by 35-7-105(1).

(2) A statement appointing an agent for service of process takes effect on filing.

(3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which takes effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process that has not been canceled earlier is effective for a period of 5 years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

History: **En. Sec. 12, Ch. 240, L. 2007.**

35-7-113. Service of process on entities. (1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent or if its registered agent cannot with reasonable diligence be served, the entity may be served in accordance with any applicable judicial rules and procedures.

(3) Service of process, notice, or demand on a registered agent must be in the form of a written document.

(4) Service of process, notice, or demand may be perfected by any other means prescribed by law other than this chapter.

History: **En. Sec. 13, Ch. 240, L. 2007.**

35-7-114. Duties of registered agent. The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;

(2) to provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by 35-7-105(1) in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under 35-7-106(1).

History: **En. Sec. 14, Ch. 240, L. 2007.**

35-7-115. Jurisdiction. The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state.

History: **En. Sec. 15, Ch. 240, L. 2007.**

35-7-116. Consistency of application. In applying and construing this chapter, consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

History: En. Sec. 16, Ch. 240, L. 2007.

35-7-117. Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

History: En. Sec. 17, Ch. 240, L. 2007.

CHAPTER 8
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Part 1
General Provisions

Part Cross-References

Close corporations — general provisions, Title 35, ch. 9, part 1.
Partnerships — general provisions, Title 35, ch. 10, part 1.
Limited partnerships — general provisions, Title 35, ch. 12, part 5.

35-8-101. Short title. This chapter may be cited as the "Montana Limited Liability Company Act".

History: En. Sec. 1, Ch. 120, L. 1993.

35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Authorized agent" means any individual granted permission by an entity to execute a document on behalf of the entity. The entity is responsible for maintaining a record of the permission granted to an authorized agent.

(4) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

(5) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(6) "Court" includes every court having jurisdiction in the case.

(7) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

(8) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(9) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(10) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

(11) "Event of dissociation" means an event that causes a person to cease to be a member.

(12) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(13) "Foreign limited liability company" means an entity that is:

(a) an unincorporated entity;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an entity may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

(14) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(15) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(16) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(17) "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

(18) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(19) "Manager" means a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.

(20) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

(21) "Member" means a person who has been admitted to membership in a limited liability company, as provided in 35-8-703, and who has not dissociated from the limited liability company.

(22) "Member-managed company" means a limited liability company other than a manager-managed company.

(23) "Operating agreement" means an agreement, including amendments, as to the conduct of the business and affairs of a limited liability company and the relations among the members, managers, and the company that is binding upon all of the members.

(24) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(25) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(26) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(27) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(29) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

(30) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(31) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

(32) "Term company" means a limited liability company designated as a term company in its articles of organization.

History: En. Sec. 2, Ch. 120, L. 1993; amd. Sec. 1, Ch. 302, L. 1999; amd. Sec. 8, Ch. 33, L. 2007.

35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

(4) Contests over names registered under this section are governed by 35-1-310.

History: En. Sec. 3, Ch. 120, L. 1993; amd. Sec. 17, Ch. 229, L. 1999; amd. Sec. 6, Ch. 27, L. 2001.

Cross-References

Registration of assumed business name — when prohibited, 30-13-202.
Trademarks, Title 30, ch. 13, part 3.
Corporate name, 35-1-308.
Names of foreign corporations, 35-1-1031.
Professional service corporation names, 35-4-206.
Limited partnership names, 35-12-505.

35-8-104. Reservation of name. (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

History: En. Sec. 4, Ch. 120, L. 1993; amd. Sec. 18, Ch. 229, L. 1999.

35-8-105. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 5, Ch. 120, L. 1993; amd. Sec. 13, Ch. 75, L. 2003.

Cross-References

Agency, Title 28, ch. 10.

35-8-106. Purpose. (1) A limited liability company organized under 35-8-201 through 35-8-211 has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under 35-8-201 through 35-8-211 for any lawful purpose except for the purpose of banking or insurance.

History: En. Sec. 6, Ch. 120, L. 1993.

35-8-107. Powers. A limited liability company may:

(1) sue, be sued, complain, and defend in all courts;

(2) transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

(3) make contracts and guarantees, incur liabilities, and borrow money;

(4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) elect or appoint agents and define their duties and fix their compensation;

(10) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) indemnify and hold harmless any member, agent, or employee from and against any claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) cease its activities and dissolve;

(14) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

History: En. Sec. 7, Ch. 120, L. 1993.

35-8-108. Registered name of foreign limited liability company — registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distinguishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;

(ii) the state or country where it was organized;

(iii) the date of its organization; and

(iv) a brief description of the nature of its business;

(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of the date the application is filed with the secretary of state.

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in this state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name.

History: **En. Sec. 19, Ch. 229, L. 1999.**

35-8-109. Effect of operating agreement — nonwaivable provisions. (1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under 35-8-707.

(3) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under 35-8-310, but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) unreasonably reduce the duty of care under 35-8-310;

(d) eliminate the obligation of good faith and fair dealing under 35-8-310, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) vary the right to expel a member upon the occurrence of an event specified in 35-8-803;

(f) vary the requirement to wind up the limited liability company's business in a case specified in 35-8-901(1)(c) or 35-8-902; or

(g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a member's distributional interest.

History: **En. Sec. 2, Ch. 302, L. 1999.**

35-8-110. Purpose — supplemental principles of law — interest rate. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106.

History: **En. Sec. 3, Ch. 302, L. 1999.**

35-8-111. Uniformity of application and construction. Unless otherwise provided in this chapter, this chapter must be applied and construed to effectuate its general purpose to make the law with respect to the subject of this chapter among states enacting the Uniform Limited Liability Company Act.

History: En. Sec. 4, Ch. 302, L. 1999.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, bylaws, and amendments of nonprofit corporations, Title 35, ch. 2, part 2.
Formation and operation of religious corporations sole, Title 35, ch. 3, part 2.
Organization and regulation of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Registration of limited liability partnership, Title 35, ch. 10, part 7.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles of incorporation, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-8-201. Formation. (1) One or more persons may form a limited liability company consisting of one or more members by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. A limited liability company is a legal entity distinct from its members.

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company.

History: En. Sec. 8, Ch. 120, L. 1993; amd. Sec. 5, Ch. 302, L. 1999.

35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) whether the company is a term company and, if so, the term specified;

(c) the complete business mailing address of its principal office, wherever located;

(d) the information required by 35-7-105(1);

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and business mailing addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, a statement that the company is to be managed in that fashion and the names and business mailing addresses of the initial members;

(f) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(g) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(h) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in 35-8-109. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment.

History: En. Sec. 9, Ch. 120, L. 1993; amd. Sec. 20, Ch. 229, L. 1999; amd. Sec. 6, Ch. 302, L. 1999; amd. Sec. 14, Ch. 75, L. 2003; amd. Sec. 57, Ch. 240, L. 2007; amd. Sec. 16, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(c), (1)(e)(i), and (1)(e)(ii) substituted references to "business mailing address" for references to "street address". Amendment effective October 1, 2011.

35-8-203. Amendment of articles of organization — restatement. (1) The articles of organization of a limited liability company are amended by filing articles of amendment with the secretary of state. The articles of amendment must set forth:

(a) the name of the limited liability company;

(b) the date the articles of organization were filed; and

(c) the amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the secretary of state, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. Restated articles of organization supersede the original articles of organization and any previous amendments to the original articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state.

History: En. Sec. 10, Ch. 120, L. 1993; amd. Sec. 21, Ch. 229, L. 1999.

35-8-204. Execution of documents. (1) Unless otherwise specified in this chapter, a document required by this chapter to be filed with or delivered to the secretary of state must be executed:

(a) by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the limited liability company is reserved to the members;

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.

History: En. Sec. 11, Ch. 120, L. 1993.

35-8-205. Filing with secretary of state. (1) The articles of organization or any other document required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and that all required filing fees have been paid, the secretary of state shall:

(a) endorse on the signed document the word "filed" and the date and time of accepting the document for filing;

(b) retain the signed document in the secretary of state's files; and

(c) send a certification letter to the person who filed the document or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of 35-8-201 through 35-8-211.

History: En. Sec. 12, Ch. 120, L. 1993; amd. Sec. 9, Ch. 71, L. 2005.

Cross-References

Filing fees, 35-1-1206.

35-8-206. Effect of filing articles of organization. (1) A limited liability company is formed when the articles of organization are filed with the secretary of state for filing.

(2) The articles of organization that are stamped "filed" and marked with the filing date are conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under this chapter.

History: En. Sec. 13, Ch. 120, L. 1993; amd. Sec. 10, Ch. 71, L. 2005.

35-8-207. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 14, Ch. 120, L. 1993; amd. Sec. 7, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.
Trademarks — filing of facsimile copy, 30-13-341.
Nonprofit corporations — facsimile filing, 35-2-120.
Partnerships — facsimile filing, 35-10-112.
Limited partnerships — facsimile filing, 35-12-615.
Cooperative associations — facsimile filing, 35-15-211.

35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the jurisdiction under whose law it is organized;

(b) the information required by 35-7-105(1);

(c) the business mailing address of its principal office, wherever located;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and business mailing addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect and the names and business mailing addresses of the members;

(e) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to the limited liability company for correction.

(5) The annual report must be executed by at least one member of the limited liability company or by the authorized agent.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is

complying with the provisions of part 13 of this chapter and rules promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 15, Ch. 120, L. 1993; amd. Sec. 7, Ch. 302, L. 1999; amd. Sec. 9, Ch. 33, L. 2007; amd. Sec. 58, Ch. 240, L. 2007; amd. Sec. 17, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(c) before "address" inserted "business mailing"; in (1)(d)(i) substituted "business mailing addresses" for "street addresses"; and in (1)(d)(ii) inserted "and the names and business mailing addresses of the members". Amendment effective October 1, 2011.

35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company:

(a) (i) has failed for 60 days after a change of its registered agent to file in the office of the secretary of state a statement of the change; or

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) has failed for 140 days to file its annual report within the time required by law;

(c) has failed to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney general may maintain an action in district court to implement the provisions of this section.

History: En. Sec. 16, Ch. 120, L. 1993; amd. Sec. 13, Ch. 302, L. 1999; amd. Sec. 59, Ch. 240, L. 2007.

Cross-References

Dissolution, Title 35, ch. 8, part 9.

35-8-210. Repealed. Sec. 36, Ch. 26, L. 2011.

History: En. Sec. 17, Ch. 120, L. 1993; amd. Sec. 15, Ch. 75, L. 2003.

35-8-211. Fees for filing, copying, and services. (1) The secretary of state shall establish fees for the following:

(a) filing documents as required by this chapter; and

(b) copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(2) The fees authorized in the section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 18, Ch. 120, L. 1993; amd. Sec. 22, Ch. 396, L. 2001.

35-8-212. Filing fees. (1) In addition to the filing fee authorized by 35-8-211, the secretary of state shall charge and collect from each foreign limited liability company:

(a) an additional filing fee at the time of filing its articles of organization; and

(b) an additional filing fee at the time of filing an application for a certificate of authority to transact business.

(2) The fees authorized in this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 19, Ch. 120, L. 1993; amd. Sec. 23, Ch. 396, L. 2001; amd. Sec. 11, Ch. 71, L. 2005.

Cross-References

Small business licensing coordination, Title 30, ch. 16.

35-8-213 and 35-8-214 reserved.

35-8-215. Correcting filed record. (1) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) preparing articles of correction that:

(i) describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(b) delivering the corrected record to the secretary of state for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

History: En. Sec. 8, Ch. 302, L. 1999.

35-8-216. Certificate of existence or authority. (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authority for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of authority for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authority issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

History: En. Sec. 9, Ch. 302, L. 1999; amd. Sec. 39, Ch. 7, L. 2001.

35-8-217. Liability for false statement in filed record. Subject to 35-8-304 and 35-8-306, if a record authorized or required to be filed under this chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

History: En. Sec. 10, Ch. 302, L. 1999.

35-8-218. Filing by judicial act. If a person required by 35-8-204 to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition a district court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.

History: En. Sec. 11, Ch. 302, L. 1999.

35-8-219. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) knows the fact;

(b) has received a notification of the fact; or

(c) has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) when an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and to know that the transaction would be materially affected by the information.

History: En. Sec. 12, Ch. 302, L. 1999.

Part 3
Relations of Members and Managers to Persons Dealing With Limited Liability Company

35-8-301. Agency power of members and managers. (1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

History: En. Sec. 20, Ch. 120, L. 1993.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Agency, Title 28, ch. 10.

35-8-302. Admissions of members and managers. (1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by this chapter is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) an admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by this chapter, is evidence against the limited liability company; and

(b) the admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

History: En. Sec. 21, Ch. 120, L. 1993.

35-8-303. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 22, Ch. 120, L. 1993.

35-8-304. Liability of members and managers to third parties. (1) Except as provided in 39-51-1105 and subsection (3) of this section, a person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision.

History: En. Sec. 23, Ch. 120, L. 1993; amd. Sec. 2, Ch. 268, L. 1997; amd. Sec. 14, Ch. 302, L. 1999; amd. Sec. 4, Ch. 88, L. 2009.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-8-305 reserved.

35-8-306. Limited liability company liability for member's or manager's conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

History: En. Sec. 15, Ch. 302, L. 1999.

35-8-307. Management and voting. (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a member-managed or manager-managed company's business requiring the consent of all of the members are:

(a) the amendment of the operating agreement under 35-8-109;

(b) the authorization or ratification of acts or transactions under 35-8-109(3)(b)(ii) that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's business wound up and the company terminated under 35-8-901;

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(4) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

History: En. Sec. 16, Ch. 302, L. 1999.

35-8-308 and 35-8-309 reserved.

35-8-310. General standards of member's and manager's conduct. (1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member shall discharge the duties under this chapter or the operating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(b) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for members in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members by subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

History: En. Sec. 17, Ch. 302, L. 1999.

Part 4

Rights and Duties of Members and Managers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

35-8-401. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 24, Ch. 120, L. 1993.

35-8-402. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 25, Ch. 120, L. 1993.

35-8-403. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 26, Ch. 120, L. 1993.

35-8-404. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 27, Ch. 120, L. 1993.

35-8-405. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) (a) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

History: En. Sec. 28, Ch. 120, L. 1993; amd. Sec. 18, Ch. 302, L. 1999.

Cross-References

Business equipment tax on business personal property, 15-6-122.

Property, 15-6-122.

Providing copy of federal tax return, 15-30-2619.

35-8-406 through 35-8-409 reserved.

35-8-410. Actions by members. (1) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) the member's rights under the operating agreement;

(b) the member's rights under this chapter; or

(c) the rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of this state. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 19, Ch. 302, L. 1999.

35-8-411. Continuation of term company after expiration of specified term. (1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

History: En. Sec. 20, Ch. 302, L. 1999.

Part 5
Finance

35-8-501. Contributions to capital. An interest in a limited liability company may be issued in exchange for tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property or contracts for services to be performed.

History: En. Sec. 29, Ch. 120, L. 1993; amd. Sec. 21, Ch. 302, L. 1999.

35-8-502. Liability for contribution. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property

paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise under 35-8-307(3)(d), may enforce the original obligation.

History: En. Sec. 30, Ch. 120, L. 1993; amd. Sec. 22, Ch. 302, L. 1999.

35-8-503. Sharing of profits and losses. Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

History: En. Sec. 31, Ch. 120, L. 1993.

35-8-504. Member's and manager's rights to payments and reimbursement. (1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

History: En. Sec. 23, Ch. 302, L. 1999.

Part 6
Distributions

Part Cross-References

Distribution and withdrawals — limited partnerships, Title 35, ch. 12, part 10.

35-8-601. Sharing of distributions. Except as provided in 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to 35-8-307(3)(f).

History: En. Sec. 32, Ch. 120, L. 1993; amd. Sec. 24, Ch. 302, L. 1999.

35-8-602. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 33, Ch. 120, L. 1993.

35-8-603. Distribution in kind. Except as provided in the articles of organization or the operating agreement:

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

History: En. Sec. 34, Ch. 120, L. 1993.

35-8-604. Distributions. (1) A distribution may not be made if, after giving effect to the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) the date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) if terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

History: En. Sec. 35, Ch. 120, L. 1993.

35-8-605. Liability upon wrongful distribution. (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with 35-8-310.

(2) A member of a manager-managed company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604.

(3) A member or manager against whom an action is brought under this section may implead in the action:

(a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and

(b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution.

History: En. Sec. 36, Ch. 120, L. 1993; amd. Sec. 25, Ch. 302, L. 1999.

35-8-606. Right to distribution. Subject to 35-8-905, when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

History: En. Sec. 37, Ch. 120, L. 1993.

Part 7
Ownership and Transfer of Property

Part Cross-References

Property rights of partner, Title 35, ch. 10, part 5.

35-8-701. Ownership of limited liability company property. (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

History: En. Sec. 38, Ch. 120, L. 1993.

35-8-702. Transfer of real property. (1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the instrument of transfer did not bind the limited liability company under 35-8-301 unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) a member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

History: En. Sec. 39, Ch. 120, L. 1993.

35-8-703. Nature of distributional interest. (1) A member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.

(2) A member's distributional interest in a limited liability company is personal property and, subject to the provisions of 35-8-707, may be transferred in whole or in part.

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of 35-8-707, may also provide for the transfer of any interest represented by the certificate.

History: En. Sec. 40, Ch. 120, L. 1993; amd. Sec. 26, Ch. 302, L. 1999.

35-8-704. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 41, Ch. 120, L. 1993.

35-8-705. Rights of judgment creditor. (1) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the distributional interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the distributional interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a distributional interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redeemed:

(a) by the judgment debtor;

(b) by one or more of the other members with property other than the company's; or

(c) with the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

History: En. Sec. 42, Ch. 120, L. 1993; amd. Sec. 28, Ch. 302, L. 1999.

35-8-706. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 43, Ch. 120, L. 1993.

35-8-707. Transfer of distributional interest — rights of transferee. (1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 35-8-502 and for obligations under 35-8-605 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited liability company under the operating agreement or the provisions of this chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) receive, upon dissolution and winding up of the limited liability company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) seek under 35-8-902(2) a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

History: En. Sec. 27, Ch. 302, L. 1999.

Part 8
Admission and Withdrawal of Members

Part Cross-References

Admission of additional limited partners, 35-12-701.

Admission of general partners, 35-12-801.

35-8-801. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 44, Ch. 120, L. 1993.

35-8-802. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 45, Ch. 120, L. 1993.

35-8-803. Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) the member's expulsion pursuant to the operating agreement;

(5) the member's expulsion by unanimous vote of the other members if:

(a) it is unlawful to carry on the company's business with the member;

(b) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) on application by the company or another member, the member's expulsion by judicial determination because the member:

(a) engaged in wrongful conduct that adversely and materially affected the company's business;

(b) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under 35-8-310; or

(c) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) the member's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) in the case of a member who is an individual:

(a) the member's death;

(b) the appointment of a guardian or general conservator for the member; or

(c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

History: En. Sec. 30, Ch. 302, L. 1999.

35-8-804. Member's power to dissociate — wrongful dissociation. (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to 35-8-803(1).

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under 35-8-803(6);

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

History: En. Sec. 31, Ch. 302, L. 1999.

35-8-805. Effect of member's dissociation. (1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under 35-8-808 and 35-8-809; and

(b) in a term company:

(i) if the company dissolves and winds up its business on or before the expiration of its specified term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under 35-8-808 and 35-8-809 on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) the member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) the member's duty of loyalty under 35-8-310(2)(c) terminates; and

(c) the member's duty of loyalty under 35-8-310(2)(a) and (2)(b) and duty of care under 35-8-310(3) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.

History: En. Sec. 32, Ch. 302, L. 1999.

35-8-806 and 35-8-807 reserved.

35-8-808. Company purchase of distributional interest. (1) A limited liability company shall purchase a distributional interest of a:

(a) member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under 35-8-901; or

(b) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under 35-8-903.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than 30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) a statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) the latest available balance sheet and income statement, if any; and

(c) an explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under 35-8-902(1)(d).

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in 35-8-809, together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under 35-8-804(2) and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

History: En. Sec. 33, Ch. 302, L. 1999.

35-8-809. Court action to determine fair value of distributional interest. (1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim

to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under 35-8-902(1)(d). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with 35-8-808(2).

(5) Interest must be paid on the amount awarded from the date determined under 35-8-808(1) to the date of payment.

History: En. Sec. 34, Ch. 302, L. 1999.

35-8-810 reserved.

35-8-811. Dissociated member's power to bind limited liability company. For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under part 12 of this chapter, is bound by an act of the dissociated member that would have bound the company under 35-8-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated member was then a member;

(2) did not have notice of the member's dissociation; and

(3) is not considered to have had notice under 35-8-812.

History: En. Sec. 35, Ch. 302, L. 1999.

35-8-812. Statement of dissociation. (1) A dissociated member or a limited liability company shall file in the office of the secretary of state a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of 35-8-301 and 35-8-811, a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

History: En. Sec. 36, Ch. 302, L. 1999.

Part 9
Dissolution

Part Cross-References

Reorganization and dissolution — close corporations, Title 35, ch. 9, part 4.
Dissolution and winding up — partnerships, Title 35, ch. 10, part 6.
Dissolution — limited partnerships, Title 35, ch. 12, part 12.

35-8-901. Dissolution. (1) A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(a) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

(e) entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

History: En. Sec. 46, Ch. 120, L. 1993; amd. Sec. 37, Ch. 302, L. 1999.

35-8-902. Judicial dissolution. (1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when:

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by 35-8-805; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer.

History: En. Sec. 47, Ch. 120, L. 1993; amd. Sec. 38, Ch. 302, L. 1999.

35-8-903. Winding up. (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under 35-8-304 to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

History: En. Sec. 48, Ch. 120, L. 1993.

35-8-904. Agency power and liability of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of termination is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act.

History: En. Sec. 49, Ch. 120, L. 1993; amd. Sec. 39, Ch. 302, L. 1999.

35-8-905. Distribution of assets. Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under 35-8-605;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under 35-8-605; and

(3) unless otherwise provided in writing in the articles of organization or a written operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

History: En. Sec. 50, Ch. 120, L. 1993; amd. Sec. 40, Ch. 302, L. 1999.

35-8-906. Articles of termination. (1) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the secretary of state articles of termination stating:

(a) the name of the limited liability company;

(b) the reason for filing the articles of termination;

(c) the effective date of the articles of termination, which must be a date certain, if they are not to be effective upon the filing;

(d) the name of the agent or agents authorized to receive service of process after dissolution or termination of the limited liability company;

(e) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company;

(f) the date of the dissolution; and

(g) that the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination.

History: En. Sec. 51, Ch. 120, L. 1993; amd. Sec. 41, Ch. 302, L. 1999.

35-8-907. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 52, Ch. 120, L. 1993.

35-8-908. Known claims against dissolved or terminated limited liability companies. (1) A dissolved or terminated limited liability company may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved or terminated limited liability company shall notify its known claimants in writing of the dissolution or termination at any time after the effective date of the dissolution or termination. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of termination pursuant to 35-8-906, by which the dissolved or terminated limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved or terminated limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved or terminated limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved or terminated limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution or termination.

History: En. Sec. 53, Ch. 120, L. 1993; amd. Sec. 42, Ch. 302, L. 1999.

35-8-909. Unknown claims against dissolved or terminated limited liability companies. (1) Subject to 35-8-908 and subsections (2) through (5) of this section, the dissolution or termination of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution or termination. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.

(3) The notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved or terminated limited liability company's principal office is located or, if there is none in this state, then in the county in which its designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) a claimant who did not receive written notice under 35-8-908;

(b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) a claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

(5) A claim not barred under this section may be enforced:

(a) against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

History: En. Sec. 54, Ch. 120, L. 1993; amd. Sec. 43, Ch. 302, L. 1999.

35-8-910 reserved.

35-8-911. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 44, Ch. 302, L. 1999.

35-8-912. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved under the provisions of 35-8-209 may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution to restore its right to carry on business in this state and to exercise all its privileges and immunities. A limited liability company applying for reinstatement shall submit to the secretary of state an official application, executed by a person who was a member or manager at the time of dissolution, setting forth:

(a) the name and business mailing address of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(2) The limited liability company shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid unless a limited liability company has only one member and has not elected to be taxed as a corporation; and

(b) all annual reports not yet filed with the secretary of state.

(3) When all requirements of subsections (1) and (2) are met and the secretary of state reinstates the limited liability company, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand and receipt of the specified fee, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(4) The secretary of state may not order a reinstatement if 5 years have elapsed since the date of dissolution.

(5) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was administratively dissolved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

History: En. Sec. 45, Ch. 302, L. 1999; amd. Sec. 16, Ch. 75, L. 2003; amd. Secs. 1, 2, Ch. 355, L. 2011.

Compiler's Comments

2011 Amendment — Amendment Not Codified: Chapter 355 substituted current text for former section that read: "(1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103;

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have been paid; and

(e) include all annual reports not yet filed with the secretary of state.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred." Amendment effective October 1, 2011.

Because of the temporary nature of the changes made by sec. 1, Ch. 355, L. 2011, the Code Commissioner did not codify the amendment to this section that was effective May 6, 2011, and terminated September 30, 2011. The temporary amendment was as follows: in (1)(d) after "paid" inserted "unless a limited liability company has only one member and has not elected to be taxed as a corporation".

The amendment to this section made by sec. 18, Ch. 26, L. 2011, was rendered void by sec. 3, Ch. 355, L. 2011, a coordination section.

35-8-913. Appeal from denial of reinstatement. (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of

dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

History: En. Sec. 46, Ch. 302, L. 1999.

Part 10
Foreign Limited Liability Companies

Part Cross-References

Foreign business corporations, Title 35, ch. 1, part 10.
Foreign nonprofit corporations, Title 35, ch. 2, part 8.
Limited liability partnerships — registration — applicability to foreign or interstate commerce, 35-10-710.
Foreign limited partnerships, Title 35, ch. 12, part 13.

35-8-1001. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and receive a certificate of authority to transact business before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign limited liability company obtain a certificate of authority. The foreign limited liability company must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state.

History: En. Sec. 55, Ch. 120, L. 1993; amd. Sec. 3, Ch. 363, L. 1999.

35-8-1002. Consequences of transacting business without authority. (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2) and except as provided in subsection (6), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign limited liability company that has failed to obtain a certificate of authority, as required under 35-8-1001, is voidable by the state, the contracting state agency, or the contracting political subdivision.

History: En. Sec. 56, Ch. 120, L. 1993; amd. Sec. 4, Ch. 363, L. 1999.

35-8-1003. Application for certificate of authority. (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of 35-8-1009;

(b) the name of the jurisdiction under whose law it is organized;

(c) its date of organization and period of duration;

(d) the business mailing address of its principal office, wherever located;

(e) the information required by 35-7-105(1); and

(f) the names and business mailing addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is organized.

History: En. Sec. 57, Ch. 120, L. 1993; amd. Sec. 60, Ch. 240, L. 2007; amd. Sec. 19, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1)(d) substituted "business mailing address" for "street address"; and in (1)(f) substituted "business mailing addresses" for "usual business addresses". Amendment effective October 1, 2011.

35-8-1004. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 58, Ch. 120, L. 1993.

35-8-1005. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 59, Ch. 120, L. 1993.

35-8-1006. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 60, Ch. 120, L. 1993.

35-8-1007. Amended certificate of authority. (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its name;

(b) the period of its duration; or

(c) the state or country of its organization.

(2) The requirements of 35-8-1003 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

History: En. Sec. 61, Ch. 120, L. 1993.

35-8-1008. Effect of certificate of authority. (1) A certificate of authority issued by the secretary of state authorizes a foreign limited liability company to transact business in this state subject to the right of the state to revoke the certificate as provided in this part.

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by this part, is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) This part does not authorize the state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business in the state.

History: En. Sec. 62, Ch. 120, L. 1993.

35-8-1009. Name. A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of 35-8-103. If the name of a foreign limited liability company does not satisfy the requirements of 35-8-103, to obtain or maintain a certificate of authority:

(1) the foreign limited liability company may add the words "limited company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use in this state; or

(2) if its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of 35-8-208 if it files the assumed business name with the secretary of state.

History: En. Sec. 63, Ch. 120, L. 1993.

35-8-1010. Withdrawal of foreign limited liability company. (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company and the name of the state or country under whose law it is organized;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

History: En. Sec. 64, Ch. 120, L. 1993.

35-8-1011. Grounds for revocation. The secretary of state may commence a proceeding under 35-8-1012 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state that its registered agent has changed or resigned within 60 days of the change or resignation; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

History: **En. Sec. 65, Ch. 120, L. 1993; amd. Sec. 61, Ch. 240, L. 2007.**

35-8-1012. Procedure for and effect of revocation. (1) If the secretary of state determines that one or more grounds exist under 35-8-1011 for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

History: **En. Sec. 66, Ch. 120, L. 1993.**

35-8-1013. Appeal from revocation. (1) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: **En. Sec. 67, Ch. 120, L. 1993.**

35-8-1014. Admission of foreign professional limited liability companies — application — revocation. (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of 35-8-1302;

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under part 13 of this chapter; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding 35-8-1001, a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of part 13 of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company through its registered agent a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of part 13 of this chapter not inconsistent with this section.

History: En. Sec. 68, Ch. 120, L. 1993; amd. Sec. 62, Ch. 240, L. 2007.

Part 11
Suits by and Against the Limited Liability Company

Part Cross-References

Business corporations — general powers, 35-1-115.
Foreign corporations — authority to transact business required, 35-1-1026.
Action by and against partnership and partners, 35-10-312.
Derivative actions — limited partners, Title 35, ch. 12, part 14.

35-8-1101. Suits by and against limited liability company. Suit may be brought by or against a limited liability company in its own name.

History: En. Sec. 69, Ch. 120, L. 1993.

35-8-1102. Repealed. Sec. 56, Ch. 302, L. 1999.

History: En. Sec. 70, Ch. 120, L. 1993.

35-8-1103. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 47, Ch. 302, L. 1999.

35-8-1104. Derivative actions — proper plaintiff — pleading — expenses. (1) A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) must have been a member at the time of the transaction of which the plaintiff complains; or

(b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

History: En. Sec. 48, Ch. 302, L. 1999.

Part 12
Merger

35-8-1201. Merger. (1) Pursuant to a plan of merger approved under subsection (3), a domestic limited liability company may merge with or into one or more limited liability companies, foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities. In the case of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which the foreign entity is incorporated or organized.

(2) A plan of merger must set forth:

(a) the name of each entity that is a party to the merger;

(b) the name of the surviving entity into which the other entities will merge;

(c) the type of organization of the surviving entity;

(d) the terms and conditions of the merger;

(e) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property, in whole or in part; and

(f) the street address of the surviving entity's principal place of business.

(3) A plan of merger must be approved:

(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under 35-8-1210(2); and

(d) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of any requirement, by all the owners of interests in the entity.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later date as the articles may provide.

History: En. Sec. 71, Ch. 120, L. 1993; amd. Sec. 49, Ch. 302, L. 1999.

Cross-References

Merger of corporation, 35-1-813.

35-8-1202. Articles of merger. (1) After approval of the plan of merger under 35-8-1201(3), unless the merger is abandoned under 35-8-1201(4), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(a) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(b) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state;

(c) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(d) the name and address of the surviving limited liability company or other surviving entity;

(e) the effective date of the merger;

(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;

(g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and

(i) the name and address of the registered agent of the surviving entity.

(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.

(4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.

History: En. Sec. 50, Ch. 302, L. 1999.

35-8-1203. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) If the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found, service of process may be made on the foreign entity as provided in 35-7-113(2). Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

History: En. Sec. 51, Ch. 302, L. 1999; amd. Sec. 63, Ch. 240, L. 2007.

35-8-1204 reserved.

35-8-1205. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership formed under the laws of this state or comparable law of another jurisdiction.

(5) "Partner" means a general partner or a limited partner.

(6) "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners of a partnership or a limited partnership.

History: **En. Sec. 52, Ch. 302, L. 1999.**

35-8-1206 through 35-8-1209 reserved.

35-8-1210. Conversion of partnership or limited partnership to limited liability company. (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination of interests, cash, or other consideration.

(4) After a conversion is approved under subsection (2), the partnership or limited partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the requirements of 35-8-202 and that contain:

(a) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership;

(b) its former name;

(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (2); and

(d) in the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect.

(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of organization.

(7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or limited partnership before the conversion takes effect.

(8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.

(9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

History: **En. Sec. 53, Ch. 302, L. 1999.**

35-8-1211. Effect of conversion — entity unchanged — part not exclusive. (1) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(b) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(e) except as otherwise provided in the agreement of conversion under 35-8-1210(3), all of the partners of the converting partnership continue as members of the limited liability company.

(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.

History: En. Sec. 54, Ch. 302, L. 1999.

Part 13
Professional Limited Liability Company

Part Cross-References

Montana Professional Corporation Act, Title 35, ch. 4.
Limited liability partnerships, Title 35, ch. 10, part 7.
United partnerships, Title 35, ch. 12.

35-8-1301. Purposes of professional limited liability companies. Professional limited liability companies may be organized under this part only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under this chapter to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to the professions.

History: En. Sec. 72, Ch. 120, L. 1993.

35-8-1302. Professional limited liability company name. The name of a domestic or foreign professional limited liability company:

(1) must contain the words “professional limited liability company”, “professional limited company”, “professional l.l.c.”, “professional llc”, “p.l.l.c.”, or “pllc”; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

History: En. Sec. 73, Ch. 120, L. 1993; amd. Sec. 55, Ch. 302, L. 1999.

35-8-1303. Professional limited liability company managers. At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

History: En. Sec. 74, Ch. 120, L. 1993.

35-8-1304. Membership in professional limited liability company. (1) Only the following persons may be members of a professional limited liability company:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

History: En. Sec. 75, Ch. 120, L. 1993.

35-8-1305. Rendering services. A domestic or foreign professional limited liability company may render professional services in this state only through natural persons permitted to render the services in this state; however, nothing in this part requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

History: En. Sec. 76, Ch. 120, L. 1993.

35-8-1306. Responsibility for services. (1) An individual who renders professional services as a member or an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. A member or an employee of a professional limited liability company is not liable for the conduct of other members or employees unless the member or employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose member or employee performs professional services within the scope of the member's or employee's employment or apparent authority to act for the company is liable to the same extent as the member or employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no greater in any respect than that of a member of a limited liability company otherwise organized under this part.

History: En. Sec. 77, Ch. 120, L. 1993; amd. Sec. 3, Ch. 268, L. 1997.

35-8-1307. Relationship to clients and patients. (1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a domestic or foreign professional limited liability company and its employees.

History: En. Sec. 78, Ch. 120, L. 1993.

CHAPTER 9
MONTANA CLOSE CORPORATION ACT

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Part 1
General

35-9-101. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

History: En. Sec. 1, Ch. 432, L. 1987.

35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by 35-9-103 except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under 35-9-103.

History: En. Sec. 2, Ch. 432, L. 1987.

Cross-References

Business corporations, Title 35, ch. 1.

Montana Professional Corporation Act, Title 35, ch. 4.

35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: En. Sec. 3, Ch. 432, L. 1987; amd. Sec. 197, Ch. 368, L. 1991.

Part 2
Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of 35-1-628 and of this chapter that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not

complied with the notice requirement of this section is bound by any documents of which the person or another person through whom the person claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon the shareholder's written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

History: En. Sec. 4, Ch. 432, L. 1987; amd. Sec. 198, Ch. 368, L. 1991; amd. Sec. 1295, Ch. 56, L. 2009.

Cross-References

Share transfer restrictions, 35-9-202.
Compulsory purchase of shares, 35-9-205 through 35-9-208.
Shareholder agreements, 35-9-301.

35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of the shareholder's spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

History: En. Sec. 5, Ch. 432, L. 1987; amd. Sec. 1296, Ch. 56, L. 2009.

Cross-References

Information on shares, 35-9-201.
Corporation's purchase options, 35-9-203, 35-9-204.
Merger, share exchange, and sale of assets, 35-9-401.
Termination of statutory close corporation status, 35-9-402.

35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 shall first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) the third person is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and agrees in writing not to terminate that qualification without the approval of the remaining shareholders; and

(b) the purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation shall deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder shall deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received the offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of the offer to the corporation.

History: En. Sec. 6, Ch. 432, L. 1987; amd. Sec. 1297, Ch. 56, L. 2009.

35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that the transferee purchased them. To exercise its option, the corporation shall give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

History: En. Sec. 7, Ch. 432, L. 1987; amd. Sec. 1298, Ch. 56, L. 2009.

Cross-References

Share transfer restrictions, 35-9-202.

35-9-205. Compulsory purchase of shares after death of shareholder. (1) Sections 35-9-206 through 35-9-208 and this section apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-826 through 35-1-839 if the amendment upon adoption terminates or substantially alters the shareholder's existing rights under these sections to have the shareholder's shares purchased.

(5) A shareholder may waive the shareholder's and the shareholder's estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy that the shareholder has independently of 35-9-206 through 35-9-208.

History: En. Sec. 8, Ch. 432, L. 1987; amd. Sec. 199, Ch. 368, L. 1991; amd. Sec. 1299, Ch. 56, L. 2009.

Cross-References

Court action to compel purchase, 35-9-206, 35-9-207.

35-9-206. Exercise of compulsory purchase right. (1) A person entitled and desiring to exercise the compulsory purchase right described in 35-9-205 shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under 35-9-207.

History: En. Sec. 9, Ch. 432, L. 1987.

Cross-References

Court action to compel purchase, 35-9-207.

35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

History: En. Sec. 10, Ch. 432, L. 1987; amd. Sec. 64, Ch. 240, L. 2007.

Cross-References

Determination of share value by court, 35-9-503.

35-9-208. Court costs and other expenses. (1) The court in a proceeding commenced under 35-9-207 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

History: En. Sec. 11, Ch. 432, L. 1987.

Part 3
Regulation and Operation

35-9-301. Shareholder agreements. (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by 35-9-302.

(5) A provision entitling one or more shareholders to dissolve the corporation under 35-9-404 is effective only if a statement of this right is contained in the articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

History: En. Sec. 12, Ch. 432, L. 1987.

Cross-References

Elimination of board of directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for the shareholder's act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-416.

History: En. Sec. 13, Ch. 432, L. 1987; amd. Sec. 200, Ch. 368, L. 1991; amd. Sec. 1300, Ch. 56, L. 2009.

35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under 35-1-236.

History: En. Sec. 14, Ch. 432, L. 1987; amd. Sec. 201, Ch. 368, L. 1991.

Cross-References

Shareholder agreements, 35-9-301.

Termination of statutory close corporation status, 35-9-402.

35-9-304. Annual meeting. (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by 35-9-301 fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (1).

History: En. Sec. 15, Ch. 432, L. 1987.

35-9-305. Holding more than one office — execution of documents in more than one capacity. An individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

History: En. Sec. 16, Ch. 432, L. 1987; amd. Sec. 1, Ch. 315, L. 1989; amd. Sec. 184, Ch. 368, L. 1991.

35-9-306. Limited liability. The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

History: En. Sec. 17, Ch. 432, L. 1987.

Cross-References

Liability for preincorporation transactions, 35-1-119.
Liability of members of limited liability company to third parties, 35-8-304.
Elimination of board of directors, 35-9-302.
Dissolution at option of shareholder, 35-9-404.

Part 4
Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets. (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

History: En. Sec. 18, Ch. 432, L. 1987.

Cross-References

Merger, consolidation, share exchange, and sale of assets of business corporation, Title 35, ch. 1, part 8.

35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-826 through 35-1-839.

History: En. Sec. 19, Ch. 432, L. 1987; amd. Sec. 202, Ch. 368, L. 1991.

Cross-References

Effect of termination, 35-9-403.

35-9-403. Effect of termination of statutory close corporation status. (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or, if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

History: En. Sec. 20, Ch. 432, L. 1987.

35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-931 through 35-1-935.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

History: En. Sec. 21, Ch. 432, L. 1987; amd. Sec. 203, Ch. 368, L. 1991.

Cross-References

Dissolution and liquidation of business corporation, Title 35, ch. 1, part 9.

Part 5
Shareholder Protection

35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in the petitioner's capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-938.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, in Lewis and Clark County. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to the matters until the shareholder has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-826 through 35-1-839 with respect to proposed corporate actions, the shareholder shall commence a proceeding under this section before the shareholder is required to give notice of the intent to demand payment under 35-1-826 through 35-1-839 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy the shareholder may have.

History: En. Sec. 22, Ch. 432, L. 1987; amd. Sec. 204, Ch. 368, L. 1991; amd. Sec. 65, Ch. 240, L. 2007.

Cross-References

Shareholder agreements, 35-9-301.

Relief, 35-9-502 through 35-9-504.

35-9-502. Ordinary relief. (1) If the court finds that one or more of the grounds for relief described in 35-9-501(1) exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

History: En. Sec. 23, Ch. 432, L. 1987.

35-9-503. Extraordinary relief — share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all the seller's shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers the shares, the seller has no further claim against the corporation or its directors, officers, or shareholders other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

History: En. Sec. 24, Ch. 432, L. 1987; amd. Sec. 1301, Ch. 56, L. 2009.

35-9-504. Extraordinary relief — dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-938; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

History: En. Sec. 25, Ch. 432, L. 1987; amd. Sec. 205, Ch. 368, L. 1991.

CHAPTER 10
PARTNERSHIPS IN GENERAL

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Part 1
Preliminary Provisions

35-10-101. Short title. This chapter may be cited as the "Uniform Partnership Act".
History: En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Business" includes every trade, occupation, or profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Limited liability partnership" means a partnership registered under 35-10-701 and includes both domestic and foreign limited liability partnerships.

(5) (a) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under 35-10-202, a predecessor law, or a comparable law of another jurisdiction.

(b) The term includes but is not limited to a limited liability partnership for all purposes of the laws of this state and all licensing laws, whether for professionals or otherwise.

(6) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(7) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(8) "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) an association;

(h) a joint venture;

(i) a government;

(j) a governmental subdivision, agency, or instrumentality; or

(k) any other legal or commercial entity.

(9) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(10) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(11) "Statement" means a statement of partnership authority under 35-10-310, a statement of denial under 35-10-311, a statement of dissociation under 35-10-622, a statement of dissolution under 35-10-627, a statement of merger under 35-10-643, an application for registration of assumed business name or a renewal of registration, or an amendment, cancellation, or withdrawal of the foregoing.

(12) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

History: En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102; amd. Sec. 1, Ch. 238, L. 1993; amd. Sec. 7, Ch. 449, L. 1995; amd. Sec. 20, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in definition of statement near end after "renewal of registration" deleted "under 35-10-701". Amendment effective October 1, 2011.

35-10-103. Knowledge and notice. (1) A person knows a fact if the person has knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to that person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(4) A person receives notification when it:

(a) comes to the person's attention; or

(b) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in

any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership.

History: **En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103; amd. Sec. 2, Ch. 238, L. 1993.**

35-10-104. Uniformity of application and construction. This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

History: **En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104; amd. Sec. 3, Ch. 238, L. 1993.**

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.
Statutes in derogation of common law — liberal construction, 1-2-103.
Agency, Title 28, ch. 10.
Partner by estoppel, 35-10-308.

35-10-105. Supplemental principles of law. (1) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

History: **En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105; amd. Sec. 5, Ch. 238, L. 1993.**

Cross-References

Maxims of jurisprudence, Title 1, ch. 3.
Uniform Commercial Code, Title 30, ch. 1 through 9A.

35-10-106. Effect of partnership agreement — nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under 35-10-111 except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access to books and records under 35-10-402(2);

(c) eliminate the duty of loyalty under 35-10-405(3);

(d) unreasonably reduce the duty of care under 35-10-405(4);

(e) eliminate the obligation of good faith and fair dealing under 35-10-405(5);

(f) vary the power to withdraw as a partner under 35-10-616(1), except to require the notice to be in writing;

(g) vary the right to expulsion of a partner by a court in the events specified in 35-10-616(5);

(h) vary the requirement to wind up the partnership business in cases specified in 35-10-624(4), (5), or (6); or

(i) restrict rights of third parties under this chapter.

History: **En. Sec. 4, Ch. 238, L. 1993.**

35-10-107 through 35-10-110 reserved.

35-10-111. Execution, filing, and recording of statements. (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. The statement must be in the English language. An individual who executes a statement as or on behalf of a partner or other person named as a partner in a statement shall state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this chapter.

History: En. Sec. 6, Ch. 238, L. 1993.

35-10-112. Facsimile filing — requirements — liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 7, Ch. 238, L. 1993; amd. Sec. 8, Ch. 290, L. 1997.

35-10-113. Filing with secretary of state. (1) A signed statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the statement conforms to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on the signed statement the word "filed" and the date and time of acceptance for filing;

(b) retain the signed statement in the secretary of state's files; and

(c) send a certification letter to the person who filed the statement or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires it, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2.

History: En. Sec. 8, Ch. 238, L. 1993; amd. Sec. 12, Ch. 71, L. 2005.

35-10-114 and 35-10-115 reserved.

35-10-116. Law governing internal affairs. Except as provided in 35-10-710, the law of the state in which a partnership has its chief executive office governs the partnership's internal affairs.

History: En. Sec. 9, Ch. 238, L. 1993; amd. Sec. 8, Ch. 449, L. 1995.

35-10-117. Partnership subject to amendment of repeal of chapter. A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

History: En. Sec. 10, Ch. 238, L. 1993.

Part 2
Nature of Partnership

35-10-201. Partnership as entity. A partnership is an entity.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106; amd. Sec. 11, Ch. 238, L. 1993.

Cross-References

Limited partnerships, Title 35, ch. 12.

35-10-202. Creation of partnership. (1) Except as provided in subsection (2), the association of two or more persons to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(2) An association created under a statute other than this chapter, a predecessor law, or a comparable law of another jurisdiction is not a partnership.

(3) In determining whether a partnership is created, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or of another charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

(4) Except as provided by 35-10-308, persons who are not partners as to each other are not partners as to other persons.

(5) A partnership created under this chapter is a general partnership, and the partners are general partners of the partnership.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107; amd. Sec. 12, Ch. 238, L. 1993.

Cross-References

Exception — sale of goodwill of business, 28-2-704.
Exception — dissolution of partnership, 28-2-705.
Loans of money — interest rates, Title 31, ch. 1, part 1.
Debtor defined, 31-2-101.
Payment of wages generally, 39-3-204.
Kinds of ownership interests, Title 70, ch. 1, part 3.
Rental agreement — terms and conditions, 70-24-201.
UPC — intestacy, wills, and donative transfers, Title 72, ch. 2.

35-10-203. Partnership property. (1) Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

(2) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(3) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property.

(4) Property is presumed to be partnership property if purchased with partnership assets even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(5) Property acquired in the name of one or more of the partners without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets is presumed to be separate property even if used for partnership purposes.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108; amd. Sec. 13, Ch. 238, L. 1993; (2) thru (5)En. Sec. 14, Ch. 238, L. 1993.

Cross-References

Property assessment, 15-8-402.
Conveyance of partnership's real property, 35-10-302.
Property rights of partner, Title 35, ch. 10, part 5.

Part 3
Relation of Partner and Partnership to Other Persons

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-301. Partner as agent of partnership. Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(1) each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notification that the partner lacks authority.

(2) an act of a partner that is not apparently for carrying on in the ordinary course of the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201; amd. Sec. 15, Ch. 238, L. 1993.

Cross-References

Partner's application to discharge attachment, 35-10-506.

35-10-302. Transfer of partnership property. (1) Subject to the effect of a statement of partnership authority pursuant to 35-10-310:

(a) partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under 35-10-301 unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) Partnership property held in the name of one or more persons other than the partnership without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership may be transferred free of any claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(3) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

History: **En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202; amd. Sec. 16, Ch. 238, L. 1993.**

Cross-References

Partnership property, 35-10-203.

Property rights of partner, Title 35, ch. 10, part 5.

35-10-303. Repealed. Sec. 60, Ch. 238, L. 1993.

History: **En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.**

35-10-304. Repealed. Sec. 60, Ch. 238, L. 1993.

History: **En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.**

35-10-305. Partnership liable for partner's actionable conduct. (1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

(2) If, in the course of its business, a partnership receives money or property of a person not a partner and that money or property is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

History: **En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205; amd. Sec. 19, Ch. 238, L. 1993.**

35-10-306. Repealed. Sec. 60, Ch. 238, L. 1993.

History: **En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.**

35-10-307. Partner's liability. (1) Except as provided in subsection (2), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) Except as provided in subsections (3) and (4), a partner of a limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for:

(a) any debts, obligations, or liabilities of or chargeable to the limited liability partnership or another partner of the limited liability partnership, whether arising in tort, contract, or otherwise; or

(b) the acts or omissions of any other partner or agents, contractors, or employees of the limited liability partnership if the debts, obligations, or liabilities arise or are incurred while the limited liability partnership is registered under 35-10-701.

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence, wrongful act, or misconduct, including without limitation an act under 35-10-628(2), or that of any person under the partner's direct supervision and control.

(4) Subsection (2) does not affect or impair the ability of a partner of a limited liability partnership to act as a guarantor or surety for, provide collateral for, or otherwise agree to be primarily or contingently liable for the debts, obligations, or liabilities of a limited liability partnership.

(5) Subsection (2) does not affect the liability of a limited liability partnership for partnership debts, obligations, or liabilities to the extent of partnership assets.

(6) Unless the partner is personally liable under this section, a partner in a limited liability partnership is not a proper party to a proceeding by or against a limited liability partnership to recover any debts, obligations, or liabilities of or chargeable to the limited liability partnership.

History: **En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207; amd. Sec. 20, Ch. 238, L. 1993; amd. Sec. 9, Ch. 449, L. 1995.**

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Guaranty, Title 28, ch. 11, parts 1 and 2.

Suretyship, Title 28, ch. 11, part 4.

Liability of limited partner, 35-12-607, 35-12-703, 35-12-902.

35-10-308. Purported partner. (1) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner in a partnership or with one or more persons who are not partners, the purported partner is liable to a person to whom the representation is made:

(a) if that person, relying on the representation, enters into a transaction with the actual or purported partnership; and

(b) the purported partner would have been personally liable for obligations of the partnership under 35-10-307 or 35-10-629 if the purported partner had been a partner.

(2) Subject to subsection (1), if the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(3) Subject to subsection (1), if a person is represented to be a partner in an existing partnership or with one or more persons who are not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. Subject to subsection (1), if fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable as if the person had actually been a partner.

(4) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(5) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

History: **En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208; amd. Sec. 22, Ch. 238, L. 1993; amd. Sec. 10, Ch. 449, L. 1995.**

Cross-References

Agency, Title 28, ch. 10.

Rules for determining existence of partnership, 35-10-202.

35-10-309. Liability of incoming partner. A person admitted as a partner into a partnership is liable for all obligations of the partnership incurred before the person's admission as if the person were a partner when the obligations were incurred, but the liability may be satisfied only out of partnership property.

History: **En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209; amd. Sec. 23, Ch. 238, L. 1993.**

35-10-310. Statement of partnership authority. (1) A partnership may file a statement of partnership authority, which:

(a) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority or limitations on the authority of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to 35-10-111(5) and states the name of the partnership but does not contain all of the other information required by subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5).

(4) Except as provided in subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a limitation on that authority is not contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as provided in 35-10-622 and 35-10-627 and subsection (5) of this section, a person not a partner is not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless canceled earlier, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement or the most recent amendment was filed with the secretary of state.

History: En. Sec. 17, Ch. 238, L. 1993.

35-10-311. Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to 35-10-310(2) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in 35-10-310(4) and (5).

History: En. Sec. 18, Ch. 238, L. 1993.

35-10-312. Action by and against partnership and partners. (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners who are personally liable for obligations of the partnership under 35-10-307 or 35-10-629 in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) the partner is personally liable for the liability of the partnership under 35-10-307 or 35-10-629; and

(b) one of the following conditions is satisfied:

(i) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(ii) (A) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; and

(B) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;

(iii) the partner has agreed that the creditor need not exhaust partnership assets;

(iv) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(v) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1), (2), or (3).

History: En. Sec. 21, Ch. 238, L. 1993; amd. Sec. 11, Ch. 449, L. 1995.

Part 4
Relation of Partners to Partnership and to One Another

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-401. Partner's rights and duties. (1) A partnership shall establish an account for each partner. The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits. The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses. However, the partner is personally liable for the charges only as provided in 35-10-307 and 35-10-629.

(2) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether capital or operating, in proportion to the partner's share of the profits. However, a partner is personally liable for the charges as provided in 35-10-307 and 35-10-629.

(3) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property. However, a partner is not personally liable for the indemnification obligation of the partnership, except to the extent that the partner would be personally liable under 35-10-307 or 35-10-629 for the liabilities incurred by the indemnified partner.

(4) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(5) A payment made by a partner that gives rise to a partnership obligation under subsection (3) or (4) constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301.

History: En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301; amd. Sec. 24, Ch. 238, L. 1993; amd. Sec. 12, Ch. 449, L. 1995.

Cross-References

Property rights, Title 35, ch. 10, part 5.

35-10-402. Partner's right to information. (1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

History: En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302; amd. Sec. 26, Ch. 238, L. 1993.

35-10-403. Duty of partners to render information. Each partner and the partnership, on demand, shall furnish to a partner and to the legal representative of a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

History: En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303; amd. Sec. 27, Ch. 238, L. 1993.

35-10-404. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.

35-10-405. General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived:

(i) by the partner in the conduct and winding up of the partnership business;

(ii) from a use or appropriation by the partner of partnership property; or

(iii) from a use or appropriation of an opportunity without the consent of the other partners;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(c) to refrain from competing with the partnership in the conduct of partnership business before the dissolution of the partnership without the consent of the other partners.

(3) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(4) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(5) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(6) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

History: En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304; amd. Sec. 28, Ch. 238, L. 1993.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

35-10-406. Continuation of partnership beyond definite term or particular undertaking. (1) If a partnership for a definite term or particular undertaking is continued without an express agreement after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners or those of them who habitually acted in the business during the term or undertaking continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the business will not be wound up.

History: En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306; amd. Sec. 31, Ch. 238, L. 1993.

Cross-References

Dissolution and winding up, Title 35, ch. 10, part 6.

35-10-407. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

History: En. Sec. 25, Ch. 238, L. 1993.

35-10-408. Partner's liability to partnership. A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.

History: En. Sec. 29, Ch. 238, L. 1993.

35-10-409. Remedies of partnership and partners. (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to 35-10-619 or enforce any other right under 35-10-616 through 35-10-623; or

(iii) right to compel a dissolution and winding up of the partnership business under 35-10-624 or enforce any other right under 35-10-602, 35-10-609, and 35-10-624 through 35-10-629; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 30, Ch. 238, L. 1993.

Part 5
Property Rights of a Partner

Part Cross-References

Partnership property, 35-10-203.
Conveyance of partnership's property, 35-10-302.

35-10-501. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.

35-10-503. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.

35-10-504. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.

35-10-505. Partner's transferable interest subject to charging order. (1) On application by a judgment creditor of a partner or partner's transferee, a court having jurisdiction may charge the transferable interest of the debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than partnership property, by one or more of the other partners; or

(c) with partnership property, by one or more of the other partners with the consent of all the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under the exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

History: En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405; amd. Sec. 35, Ch. 238, L. 1993.

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment that may be recovered against the partner who is defendant in the action or that may be recovered against that partner in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment that was levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be an amount that the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979; amd. Sec. 1302, Ch. 56, L. 2009.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Restrictions on partner's authority as agent of partnership, 35-10-301.

35-10-507. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R.C.M. 1921; re-en. Sec. 9425, R.C.M. 1935; amd. Sec. 11-165, Ch. 264, L. 1963; R.C.M. 1947, 93-5811.

35-10-508. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

History: En. Sec. 32, Ch. 238, L. 1993.

35-10-509. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

History: En. Sec. 33, Ch. 238, L. 1993.

35-10-510. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under 35-10-624(6) a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

History: En. Sec. 34, Ch. 238, L. 1993.

Part 6
Dissolution and Winding Up

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-10-601. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.

35-10-602. Partnership continues after dissolution. A partnership continues after dissolution until the winding up of its business is completed, at which time the partnership is terminated.
History: En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502; amd. Sec. 46, Ch. 238, L. 1993.

35-10-603. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.

35-10-604. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.

35-10-605. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.

35-10-606. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.

35-10-607. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.

35-10-608. Repealed. Sec. 60, Ch. 238, L. 1993.
History: En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.

35-10-609. Right to wind up partnership business. (1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative; settle and close the partnership's business; dispose of and transfer the partnership's property; discharge the partnership's liabilities; distribute the assets of the partnership pursuant to 35-10-629; settle disputes by mediation or arbitration; and perform other necessary acts.

History: En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509; amd. Sec. 47, Ch. 238, L. 1993.

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

35-10-610. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.

35-10-611. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.

35-10-612. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.

35-10-613. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.

35-10-614. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.

35-10-615. Repealed. Sec. 60, Ch. 238, L. 1993.

History: En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.

35-10-616. Events causing partner's dissociation. A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) a partnership that is a partner has been dissolved and its business is being wound up;

(5) the partner's expulsion by judicial decree, made on application by the partnership or another partner, because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 35-10-405; or

(c) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) failing within 90 days after the appointment to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

History: En. Sec. 36, Ch. 238, L. 1993.

Cross-References

Uniform Probate Code — general provisions, Title 72, ch. 1.

Trust Code — general provisions, Title 72, ch. 33.

35-10-617. Partner's wrongful dissociation. (1) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under 35-10-624(2)(a);

(ii) the partner is expelled by judicial decree under 35-10-616(5); or

(iii) a partner, who is not an individual, a trust other than a business trust, or an estate, is expelled or otherwise dissociated because the entity willfully dissolved or terminated.

(2) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

History: En. Sec. 37, Ch. 238, L. 1993.

35-10-618. Effect of partner's dissociation. (1) If a partner's dissociation results in a dissolution and winding up of the partnership business, 35-10-602, 35-10-609, and 35-10-624 through 35-10-629 apply; otherwise 35-10-619 through 35-10-623 apply.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in 35-10-609;

(b) the partner's duty of loyalty under 35-10-405(2)(c) terminates; and

(c) the partner's duty of loyalty under 35-10-405(2)(a) and (2)(b) and duty of care under 35-10-405(4) continue only with regard to matters arising or events occurring before the dissociation.

History: En. Sec. 38, Ch. 238, L. 1993.

35-10-619. Purchase of dissociated partner's interest. (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under 35-10-624, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) (a) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under 35-10-629(2) if on the date of dissociation the assets of the partnership were sold at a price equal to the greater of:

(i) the liquidation value; or

(ii) the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date.

(b) In either case, the selling price of the partnership assets must be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under 35-10-617(2) and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under 35-10-620. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay or cause to be paid in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) an explanation of how the estimated amount of the payment was calculated; and

(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to 35-10-409(2)(b)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with the requirements of subsection (7).

History: En. Sec. 39, Ch. 238, L. 1993.

35-10-620. Dissociated partner's power to bind partnership — liability to partnership. (1) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644, is bound by an act of the dissociated partner that would have bound the partnership under 35-10-301 before dissociation if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622.

(2) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under subsection (1).

History: En. Sec. 40, Ch. 238, L. 1993.

35-10-621. Dissociated partner's liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is personally liable as a partner to the other party as the result of a partnership obligation incurred in connection with a transaction entered into by the partnership or a surviving partnership under 35-10-635 through 35-10-637 and 35-10-641 through 35-10-644 within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation;

(c) is not considered to have had knowledge under 35-10-310(5) or notice under 35-10-622; and

(d) the obligation is one for which the partner would be personally liable under 35-10-307 or 35-10-629 if the partner had not dissociated.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

History: En. Sec. 41, Ch. 238, L. 1993; amd. Sec. 13, Ch. 449, L. 1995.

35-10-622. Statement of dissociation — filing. (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) If a statement of dissociation is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.

(3) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of 35-10-310(4) and (5).

(4) For the purposes of 35-10-301, 35-10-620, and 35-10-621(2), a person who is not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

History: En. Sec. 42, Ch. 238, L. 1993; amd. Sec. 13, Ch. 71, L. 2005.

35-10-623. Continued use of partnership name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

History: En. Sec. 43, Ch. 238, L. 1993.

35-10-624. Events causing dissolution and winding up of partnership business. Except as provided in 35-10-625, a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under 35-10-616(2) through (10), of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under 35-10-617 or a partner's dissociation by death or otherwise under 35-10-616(6) through (10), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

History: En. Sec. 44, Ch. 238, L. 1993.

35-10-625. Dissolution deferred ninety days. (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under 35-10-624(1) or (2)(a), the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under 35-10-620(2) or 35-10-621(2) but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

History: En. Sec. 45, Ch. 238, L. 1993.

35-10-626. Partner's power to bind partnership after dissolution. Subject to 35-10-627, a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under 35-10-301 before dissolution if the other party to the transaction did not have notice of the dissolution.

History: **En. Sec. 48, Ch. 238, L. 1993.**

35-10-627. Statement of dissolution. (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) If a statement of dissolution is filed, the statement must be filed with the same entity with which the original partnership agreement was filed.

(3) A statement of dissolution cancels a filed statement of partnership authority for the purposes of 35-10-310(4) and is a limitation on authority for the purposes of 35-10-310(5).

(4) For the purposes of 35-10-301 and 35-10-626, a person who is not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(5) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person who is not a partner as provided in 35-10-310(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

History: **En. Sec. 49, Ch. 238, L. 1993; amd. Sec. 14, Ch. 71, L. 2005.**

35-10-628. Partner's liability to other partners after dissolution. (1) Except as provided in 35-10-625(3)(b) and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under 35-10-626 for which the partner is personally liable under 35-10-307 or 35-10-621.

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under 35-10-626(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

History: **En. Sec. 50, Ch. 238, L. 1993; amd. Sec. 14, Ch. 449, L. 1995.**

35-10-629. Settlement of accounts among partners. (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive account balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance but only to the extent that the negative balance is attributable to debts, obligations, or liabilities for which the partner is personally liable under 35-10-307.

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership losses and to the extent the partner is personally liable under 35-10-307, the amount necessary to satisfy partnership obligations. If a partner fails or is not obligated to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations but only to the extent the contributions are made because of obligations for which the other partners are personally liable under 35-10-307.

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership under subsections (2) and (3).

(5) An assignee for the benefit of creditors of a partnership or a partner or a person appointed by a court to represent creditors of a partnership or a partner may enforce a partner's obligation to contribute to the partnership under subsections (2) and (3).

History: **En. Sec. 51, Ch. 238, L. 1993; amd. Sec. 15, Ch. 449, L. 1995.**

35-10-630 through 35-10-634 reserved.

35-10-635. Conversion of partnership to limited partnership. (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation, incurred by the partnership before the conversion takes effect, for which the partner is personally liable under 35-10-307 and 35-10-629. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect but only to the extent that the limited partner would have been personally liable for the partnership under 35-10-307 or 35-10-629 immediately prior to the conversion. The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12.

History: En. Sec. 52, Ch. 238, L. 1993; amd. Sec. 16, Ch. 449, L. 1995.

35-10-636. Conversion of limited partnership to partnership. (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership for which the partner is personally liable under 35-10-307 or 35-10-629 and which arises or is incurred after the conversion takes effect.

History: En. Sec. 53, Ch. 238, L. 1993; amd. Sec. 17, Ch. 449, L. 1995.

35-10-637. Effect of conversion — entity unchanged. (1) A partnership or limited partnership that has been converted pursuant to 35-10-635 or 35-10-636 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

History: En. Sec. 54, Ch. 238, L. 1993.

35-10-638 through 35-10-640 reserved.

35-10-641. Merger of partnerships. (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) the terms and conditions of the merger;

(e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(f) the street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

(b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

History: En. Sec. 55, Ch. 238, L. 1993.

35-10-642. Effect of merger. (1) When a merger takes effect:

(a) every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to

satisfy that party's obligations to the surviving entity in the manner provided in 35-10-629(3) as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under 35-10-619. The surviving entity is bound under 35-10-620 by an act of a partner dissociated under this subsection, and the partner is liable under 35-10-621 for transactions entered into by the surviving entity after the merger takes effect.

History: En. Sec. 56, Ch. 238, L. 1993.

35-10-643. Statement of merger. (1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to 35-10-111, that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

History: En. Sec. 57, Ch. 238, L. 1993.

35-10-644. Nonexclusive. Sections 35-10-635 through 35-10-637 and 35-10-641 through 35-10-643 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

History: En. Sec. 58, Ch. 238, L. 1993.

Part 7
Registration of Limited Liability Partnerships

35-10-701. Registration of limited liability partnerships. (1) To become a limited liability partnership, a partnership shall file with the secretary of state an application for registration on a form furnished by the secretary of state that indicates an intention to register as a limited liability partnership under this section.

(2) The application for registration of a limited liability partnership must be executed by two or more partners authorized to execute the application and registration and must contain the following information:

(a) the name and business mailing address of the limited liability partnership;

(b) the date of first use, in commerce, of the proposed limited liability partnership;

(c) a description of business transacted by the limited liability partnership; and

(d) the name and business mailing address of each of the partners.

(3) The secretary of state shall register as a limited liability partnership any partnership that substantially complies with this section.

(4) A partnership's registration under this section is effective when the secretary of state files the partnership's application for registration under subsection (1) and remains in effect until it is canceled by the secretary of state.

(5) The fact that an application for registration of a limited liability partnership under this section or any renewals of that partnership are on file with the office of the secretary of state is notice that the partnership is a limited liability partnership and is notice of all other facts set forth in the application.

(6) The secretary of state shall provide necessary forms for the registration of a limited liability partnership under subsections (1) and (2) or any renewals of registration.

History: En. Sec. 18, Ch. 449, L. 1995; amd. Sec. 21, Ch. 26, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 26 in (1) after "registration" deleted "of an assumed business name" and deleted former second sentence that read: "The registration of a limited liability partnership under this section is subject to all of the terms and conditions otherwise applicable to the registration of an assumed business name pursuant to Title 30, chapter 13, part 2"; in (2) in introductory clause substituted "registration of a limited liability partnership" for "registration of an assumed business name", substituted "two or more partners" for "one or more partners", at end after "registration" inserted "and must contain the following information:", and inserted (2)(a) through (2)(d) establishing information required to be submitted with application; in (3) after "with" deleted "Title 30, chapter 13, part 2, and"; in (4) after "application for registration" deleted "of an assumed business name" and after "secretary of state" deleted "pursuant to Title 30, chapter 13, part 2"; in (5) substituted "registration of a limited liability partnership under this section or any renewals of that partnership are" for "registration of an assumed business name under this section or any renewals of the assumed business name is"; in (6) substituted "subsections (1) and (2)" for "subsection (1)"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

License fee for limited liability partnership, 30-13-217.

35-10-702. Effect of registration — entity unchanged. (1) A partnership that has registered under 35-10-701 is for all purposes of the laws of this state, including but not limited to all licensing laws, whether for professionals or otherwise, the same entity that existed before the registration.

(2) When registration of a partnership under 35-10-701 takes effect:

(a) all tangible and intangible property, whether real or personal, owned by the partnership remains vested in the partnership;

(b) all debts, obligations, or liabilities of and chargeable to the partnership continue as debts, obligations, or liabilities of the partnership; and

(c) any actions or proceedings pending by or against the partnership may be continued as if the registration under 35-10-701 had not occurred.

(3) If a partnership dissolves and its business continues without liquidation of the partnership affairs, the registration of the limited liability partnership must be considered continued and must continue to be applicable to the partnership continuing the business. The partnership continuing the business is considered to have filed any documents required or permitted under this section that were filed by the dissolved partnership. The partnership continuing the business shall renew its registration at the time the dissolved partnership would have been required to file an application for renewal pursuant to Title 30, chapter 13, part 2.

(4) If a partnership dissolves, winds up its affairs, and liquidates, the registration of the limited liability partnership must be considered continued and must remain in effect as to the partnership and the partners during the period of dissolution, winding up, and liquidation and as to the partners subsequent to dissolution, winding up, and liquidation as to debts, obligations, or liabilities for which a partner was not personally liable under 35-10-307 or 35-10-629.

History: En. Sec. 19, Ch. 449, L. 1995.

35-10-703. Name of limited liability partnerships. (1) The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

(2) The name of a limited liability partnership may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability partnership is other than a limited liability partnership.

History: En. Sec. 20, Ch. 449, L. 1995; amd. Sec. 7, Ch. 27, L. 2001.

35-10-704 through 35-10-709 reserved.

35-10-710. Applicability to foreign or interstate commerce. (1) A partnership formed pursuant to an agreement governed by this chapter may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(2) It is the intent of the legislature that the legal existence of partnerships formed pursuant to an agreement governed by this chapter must be recognized outside the boundaries of this state and that the laws of this state governing a partnership transacting business outside this state be granted the protection of full faith and credit under the United States constitution.

(3) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an agreement governed by this chapter, including the personal liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws of this state.

(4) Before transacting business in this state as a limited liability partnership, a partnership formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this state shall:

(a) comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(b) register under 35-10-701. If registered, the partnership appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(5) Notwithstanding 35-10-116, the internal affairs of partnerships formed pursuant to an agreement governed by the laws of any state or jurisdiction other than this state, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership or another partner, are subject to and governed by the laws of the jurisdiction in which the partnership is formed.

History: En. Sec. 21, Ch. 449, L. 1995.

35-10-711 through 35-10-714 reserved.

35-10-715. Term and renewal of limited liability partnership registration. (1) Registration of a limited liability partnership is effective for a term of 5 years from the date of registration. Upon application for renewal of registration on forms furnished by the secretary of state, the registration may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of the registration of a limited liability partnership, the secretary of state shall notify the limited liability partnership of the pending expiration by mailing a notice to the business mailing address of the limited liability partnership.

(3) If a limited liability partnership fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the registration, the secretary of state shall cancel the registration and the partnership is no longer a limited liability partnership.

History: En. Sec. 22, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-716. Application for renewal of limited liability partnership registration. An application for renewal of registration of a limited liability partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the following information:

(1) the complete name and business mailing address of the limited liability partnership;

(2) the name and business mailing address of each partner; and

(3) a description of business being transacted.

History: En. Sec. 23, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-717. Amendment to registration of limited liability partnership. An amendment to registration of a limited liability partnership must be filed with the secretary of state within 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the partners transacting or having interest in the limited liability partnership;

(2) there is a change in the description of the business transacted;

(3) a partner having an interest in the limited liability partnership withdraws from the business or dies; or

(4) two or more partners apply to change the name of a registered limited liability partnership.

History: En. Sec. 24, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-718. Filing amendment to registration of limited liability partnership — issuance of certificate. (1) An application for amended registration of a limited liability partnership must be filed with the secretary of state and must include:

(a) the complete limited liability partnership name prior to adoption of the amendment;

(b) the complete new limited liability partnership name, if applicable;

(c) the business mailing address of the limited liability partnership;

(d) if the name of any partner to a limited liability partnership is to be changed, the new name of the partner;

(e) if a partner withdraws or dies, a statement that the person has withdrawn or died;

(f) a statement that the amended registration of limited liability partnership supersedes the original registration and all amendments to the original registration; and

(g) all other information determined by the secretary of state to be necessary to support an application.

(2) If the secretary of state finds that the application for amended registration of a limited liability partnership complies with this part and that all applicable fees have been paid, the secretary of state shall:

(a) endorse on the application for amendment the word "filed" and the date on which the application for amendment was filed;

(b) file the original application for amendment in the secretary of state's office; and

(c) issue to the limited liability partnership a certificate of amendment.

(3) If the limited liability partnership fails to comply with the requirements of this section, the secretary of state shall cancel the registration.

History: En. Sec. 25, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-719. Reservation of proposed limited liability partnership name. (1) An authorized person who has not commenced business but intends to commence business may reserve a limited liability partnership name for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of a limited liability partnership name.

(2) The proposed limited liability partnership name may not be the same as or indistinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state.

(3) An applicant for a proposed limited liability partnership name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is.

History: En. Sec. 26, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-720. Filing application for reservation of limited liability partnership name — issuance of certificate. (1) A person seeking to reserve a limited liability partnership name shall submit a completed application and all applicable fees to the secretary of state.

(2) The application for a proposed limited liability partnership name must include but is not limited to the following information:

(a) the complete limited liability partnership name to be reserved;

(b) the name and business mailing address of the limited liability partnership;

(c) the date the limited liability partnership intends to commence business; and

(d) a description of business that the limited liability partnership intends to transact.

(3) If the secretary of state finds the application complies with the provisions of this part, the secretary of state shall:

(a) endorse on the application the word "filed" and the date on which the application was filed;

(b) file the application in the secretary of state's office; and

(c) issue a certificate of reservation to the person who submits the application.

History: En. Sec. 27, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-721. Voluntary cancellation of registration of limited liability partnership. (1) When a limited liability partnership wishes to cancel its registration, two or more partners shall deliver to the secretary of state an executed and verified original affidavit of cancellation of registration of a limited liability partnership, which must include but is not limited to the following information:

(a) the complete name of the registered limited liability partnership to be canceled;

(b) the business mailing address of the limited liability partnership; and

(c) the names and business mailing addresses of the partners.

(2) If the secretary of state finds the affidavit complies with the provisions of this section, the secretary of state shall file it and mail a letter acknowledging cancellation of the registration to the limited liability partnership.

History: En. Sec. 28, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-722. Execution constituting affirmation — penalty — warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties for false swearing, by each person executing the document that the statements in the document are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by the secretary of state under this part.

History: En. Sec. 29, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-723. Evidentiary effect of certificates and documents of secretary of state. All certificates issued by the secretary of state in accordance with the provisions of this part and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this part when certified by the secretary of state must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated in the certificates or documents.

History: En. Sec. 30, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-10-724. Effect of transacting business without certificate. A person conducting or transacting business in this state as a limited liability partnership without an effective certificate of registration of a limited liability partnership name or a person having an interest in the limited liability partnership name may not maintain any suit or action in the courts of this state under the name.

History: En. Sec. 31, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

CHAPTER 11
PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships
(Repealed)

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.
35-11-202. Certified copies of register and proof of publication to be evidence.

Chapter Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Part 1
Provisions Relating to Partnerships
(Repealed)

35-11-101. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R.C.M. 1921; Cal. Civ. C. Sec. 2466; re-en. Sec. 8019, R.C.M 1935; amd. Sec. 2, Ch. 111, L. 1969; R.C.M. 1947, 63-601.

35-11-102. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3281, Civ. C. 1895; re-en. Sec. 5505, Rev. C. 1907; re-en. Sec. 8020, R.C.M. 1921; Cal. Civ. C. Sec. 2468; re-en. Sec. 8020, R.C.M 1935; R.C.M. 1947, 63-602(part).

35-11-103. Repealed. Sec. 18, Ch. 260, L. 1979.

History: En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R.C.M. 1921; Cal. Civ. C. Sec. 2469; re-en. Sec. 8021, R.C.M 1935; amd. Sec. 3, Ch. 111, L. 1969; R.C.M. 1947, 63-603.

Part 2
Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Each county clerk shall keep a register of the names of firms and persons mentioned in the certificates filed with the clerk, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every partnership and of each partner in the partnership.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604; amd. Sec. 155, Ch. 575, L. 1981; amd. Sec. 1303, Ch. 56, L. 2009.

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by the clerk, and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts stated in the certificate or affidavits.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605; amd. Sec. 156, Ch. 575, L. 1981; amd. Sec. 1304, Ch. 56, L. 2009.

CHAPTER 12
LIMITED PARTNERSHIPS

Part 1 — General
(Repealed)

Part 2 — Formation—Certificate
(Repealed)

Part 3 — Powers, Duties, and Liabilities of Partners
(Repealed)

Part 4 — Dissolution
(Repealed)

Part 5 — General Provisions

35-12-501. Short title.
35-12-502. Construction and application.

35-12-503. Repealed.
35-12-504. Definitions.
35-12-505. Name.
35-12-506. Reservation of name.
35-12-507. Repealed.
35-12-508. Required information.
35-12-509. Nature, purpose, and duration of entity.
35-12-510. Business transactions of partner with the partnership.
35-12-511. Knowledge and notice.
35-12-512. Powers.
35-12-513. Governing law.
35-12-514. Supplemental principles of law — rate of interest.
35-12-515. Effect of partnership agreement — nonwaivable provisions.
35-12-516. Consent and proxies of partners.
35-12-517 through 35-12-520 reserved.
35-12-521. Secretary of state to establish fees.
35-12-522. Action by attorney general.

Part 6 — Formation—Certificate of Limited Partnership

35-12-601. Formation of limited partnership — certificate of limited partnership.
35-12-602. Amendments or restatement of certificate.
35-12-603. Statement of cancellation.
35-12-604. Signing of records.
35-12-605. Signing and filing pursuant to judicial order.
35-12-606. Repealed.
35-12-607. Liability for false statement in certificate.
35-12-608. Repealed.
35-12-609. Repealed.
35-12-610. Term and renewal of certification.
35-12-611. Application for renewal of certification.
35-12-612. Filing of application for renewal of certification — issuance of certificate.
35-12-613. Involuntary cancellation of certificate.
35-12-614. Delivery to and filing of records by secretary of state — effective time and date.
35-12-615. Filing of facsimile copy.
35-12-616. Correcting filed record.
35-12-617. Certificate of fact.
35-12-618. Application for renewal of foreign limited partnership certificate of authority — requirements for appointed registered agent.
35-12-619 reserved.
35-12-620. Reinstatement following cancellation for failure to renew.

Part 7 — Limited Partners

35-12-701. Becoming limited partner.
35-12-702. Repealed.
35-12-703. No liability as limited partner for limited partnership obligations.
35-12-704. Person erroneously believing self to be limited partner.
35-12-705. Right of limited partner and former limited partner to information.
35-12-706. No right or power as limited partner to bind limited partnership.
35-12-707. Limited duties of limited partners.

Part 8 — General Partners

35-12-801. Becoming partner.
35-12-802. Repealed.
35-12-803. General partner's liabilities.
35-12-804. Repealed.
35-12-805. Repealed.
35-12-806. General partner as agent of limited partnership.
35-12-807. Limited partnership liable for general partner's actionable conduct.
35-12-808. Actions by and against partnership and partners.
35-12-809. Management rights of general partner.
35-12-810. Right of general partner and former general partner to information.
35-12-811. General standards of general partner's conduct.

Part 9 — Finance

35-12-901. Form of contributions.
35-12-902. Liability for contributions.
35-12-903. Repealed.
35-12-904. Repealed.
35-12-905. Sharing of distributions.

Part 10 — Distribution and Dissociation

35-12-1001. Interim distributions.
35-12-1002. Repealed.
35-12-1003. Repealed.
35-12-1004. Repealed.
35-12-1005. Distributions in kind.
35-12-1006. Right to distributions.
35-12-1007. Repealed.
35-12-1008. Repealed.
35-12-1009. No distribution on account of dissociation.
35-12-1010. Limitations on distribution.
35-12-1011. Liability for improper distributions.
35-12-1012 through 35-12-1015 reserved.
35-12-1016. Dissociation as limited partner.
35-12-1017. Effect of dissociation as limited partner.
35-12-1018. Dissociation as general partner.
35-12-1019. Person's power to dissociate as general partner — wrongful dissociation.
35-12-1020. Effect of dissociation as general partner.
35-12-1021. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.
35-12-1022. Liability to other persons of person dissociated as general partner.

Part 11 — Assignment of Partnership Interests

35-12-1101. Repealed.
35-12-1102. Repealed.
35-12-1103. Rights of creditors of partner or transferee.
35-12-1104. Repealed.
35-12-1105. Power of estate of deceased partner.
35-12-1106. Partner's transferable interest.
35-12-1107. Transfer of partner's transferable interest.

Part 12 — Dissolution

35-12-1201. Nonjudicial dissolution.
35-12-1202. Judicial resolution.
35-12-1203. Repealed.
35-12-1204. Repealed.
35-12-1205. Winding up.
35-12-1206 through 35-12-1210 reserved.
35-12-1211. Power of general partner and person dissociated as general partner to bind partnership after dissolution.
35-12-1212. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and person dissociated as general partner.
35-12-1213. Known claims against dissolved limited partnership.
35-12-1214. Other claims against dissolved limited partnership.
35-12-1215. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.
35-12-1216. Disposition of assets — when contributions required.

Part 13 — Foreign Limited Partnerships

35-12-1301. Governing law.
35-12-1302. Application for certificate of authority.
35-12-1303. Repealed.
35-12-1304. Repealed.
35-12-1305. Repealed.
35-12-1306. Repealed.
35-12-1307. Cancellation of certificate of authority — effect of failure to have certificate.
35-12-1308. Renumbered 35-12-522.
35-12-1309. Activities not constituting transacting business.
35-12-1310. Filing of certificate of authority.
35-12-1311. Application for renewal of foreign limited partnership certification — requirement for appointed registered agent.
35-12-1312. Noncomplying name of foreign limited partnership.
35-12-1313. Revocation of certificate of authority.

Part 14 — Derivative Actions

35-12-1401. Derivative action.
35-12-1402. Proper plaintiff.
35-12-1403. Pleading.
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35-12-1405. Direct action by partner.

Part 15 — Conversion

35-12-1501. Definitions.
35-12-1502. Conversion.
35-12-1503. Action on plan of conversion by converting limited partnership.
35-12-1504. Filings required for conversion — effective date.
35-12-1505. Effect of conversion.
35-12-1506 through 35-12-1510 reserved.
35-12-1511. Merger.
35-12-1512. Action on plan of merger by constituent limited partners.
35-12-1513. Filings required for merger — effective date.
35-12-1514. Effect of merger.
35-12-1515. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status.
35-12-1516 through 35-12-1519 reserved.
35-12-1520. Liability of general partner after conversion or merger.
35-12-1521. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.
35-12-1522. Part not exclusive.

Chapter Compiler's Comments

Relation to Electronic Signatures in Global and National Commerce Act: Section 95, Ch. 216, L. 2011, provided: "This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, et seq., but this chapter does not modify, limit, or supersede section 101(c) of that act or authorize electronic delivery of any of the notices described in section 103(b) of that act."

Application to Existing Relationships: Section 96, Ch. 216, L. 2011, provided: "(1) Before [the effective date of this act] [October 1, 2011], [this act] governs only:

(a) a limited partnership formed on or after [the effective date of this act]; and

(b) except as otherwise provided in subsections (3) and (4), a limited partnership formed before [the effective date of this act] that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to [this act].

(2) Except as otherwise provided in subsection (3), on and after [the effective date of this act], [this act] governs all limited partnerships.

(3) With respect to a limited partnership formed before [the effective date of this act], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 35-12-509(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this act].

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with 35-12-601(1)(d).

(c) [Sections 49 and 50] [35-12-1016 and 35-12-1017] do not apply, and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this act].

(d) [Section 51(4)] [35-12-1018(4)] does not apply.

(e) [Section 51(5)] [35-12-1018(5)] does not apply, and a court has the same power to expel a general partner as the court had immediately before [the effective date of this act].

(f) Section 35-12-1201(3) does not apply, and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this act].

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) to be subject to [this act], after the election takes effect, the provisions of [this act] relating to the liability of the limited partnership's general partners to third parties apply:

(a) before [the effective date of this act], to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after [the effective date of this act], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under subsection (4)(a)(ii)."

Chapter Cross-References

Applicability of partnership law, 35-10-201.

Part 1
General
(Repealed)

35-12-101. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.

35-12-102. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.

35-12-103. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.

35-12-104. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2

Formation — Certificate (Repealed)

35-12-201. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.

35-12-205. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.

35-12-206. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.

35-12-207. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.

Part 3

Powers, Duties, and Liabilities of Partners (Repealed)

35-12-301. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.

35-12-302. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.

35-12-303. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.

35-12-304. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.

35-12-305. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.

35-12-313. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.

35-12-314. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).

Part 4
Dissolution
(Repealed)

35-12-401. Repealed. Sec. 64, Ch. 522, L. 1981.
History: (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947; Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. Repealed. Sec. 64, Ch. 522, L. 1981.
History: En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

Part 5
General Provisions

Part Cross-References

Foreign limited partnerships, Title 35, ch. 12, part 13.

35-12-501. Short title. This chapter may be cited as the “Uniform Limited Partnership Act”.

History: En. Sec. 1, Ch. 522, L. 1981.

35-12-502. Construction and application. In applying and construing this chapter, consideration must be given to promote uniformity of the law with respect to its subject matter among states that enact it.

History: En. Sec. 2, Ch. 522, L. 1981; amd. Sec. 1, Ch. 216, L. 2011.

Compiler’s Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: “This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.” Amendment effective October 1, 2011.

35-12-503. Repealed. Sec. 97, Ch. 216, L. 2011.
History: En. Sec. 3, Ch. 522, L. 1981.

35-12-504. Definitions. In this chapter, the following definitions apply:

(1) “Certificate of limited partnership” means the certificate required by 35-12-601. The term includes the certificate as amended or restated.

(2) “Contribution”, except in the phrase “right of contribution”, means any benefit provided by a person to a limited partnership in order to become a partner in the person’s capacity as a partner.

(3) “Debtor in bankruptcy” means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) “Designated office” means:

(a) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Title 35, chapter 7, part 1; and

(b) with respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to 35-12-803(3).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability partnership.

(8) "General partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a general partner under 35-12-801; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(9) "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a limited partner under 35-12-701; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 96(1) or (2), Chapter 216, Laws of 2011; and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership", means an entity having one or more general partners and one or more limited partners that is formed under this chapter by two or more persons or becomes subject to this chapter under Title 35, chapter 12, part 15, or section 96(1) or (2), Chapter 216, Laws of 2011. The term includes the agreement as amended.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(14) "Person" means an individual, corporation, business trust, estate trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under 35-12-508.

(19) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

History: **En. Sec. 4, Ch. 522, L. 1981; amd. Sec. 4, Ch. 268, L. 1997; amd. Sec. 1305, Ch. 56, L. 2009; amd. Sec. 2, Ch. 216, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 216 substituted current definitions for former definitions (see 2011 Session Law for former text). Amendment effective October 1, 2011.

35-12-505. Name. (1) The name of a limited partnership may contain the name of any partner.

(2) The name of each limited partnership that is not a limited liability partnership must contain the phrase "limited partnership" or the abbreviation "l.p." or "lp" and may not contain the phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp".

(3) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "l.l.l.p." or "lllp" and may not contain the abbreviation "l.p."or "lp".

(4) Unless authorized by subsection (5), the name of a limited partnership must be distinguishable in the records of the secretary of state from:

(a) the name of each person other than an individual incorporated, organized, or authorized to transact business in this state; and

(b) each name reserved under Title 30, chapter 13, part 2, or 35-12-506.

(5) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4). The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(a) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) and that is distinguishable in the records of the secretary of state from the name applied for;

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(c) the applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

(6) Subject to 35-12-1312, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

History: **En. Sec. 5, Ch. 522, L. 1981; amd. Sec. 88, Ch. 120, L. 1993; amd. Sec. 5, Ch. 268, L. 1997; amd. Sec. 22, Ch. 229, L. 1999; amd. Sec. 8, Ch. 27, L. 2001; amd. Sec. 4, Ch. 216, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and

(d) must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308." Amendment effective October 1, 2011.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Business corporation — corporate name, Title 35, ch. 1, part 3.
Business trust name, 35-5-201.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.
Rural cooperative utility names, 35-18-201.

35-12-506. Reservation of name. (1) The exclusive right to the use of a name that complies with 35-12-505 may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt the name;

(b) a limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(c) a foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name; and

(d) a person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(e) a foreign limited partnership formed under the name; or

(f) a foreign limited partnership formed under a name that does not comply with 35-12-505(2) or (3), but the name reserved under this subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with 35-12-505(2) and (3).

(2) A person may apply to reserve a name under subsection (1) by delivering to the secretary of state for filing an application that states the name to be reserved and the subsection of subsection (1) that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for a 120 days.

(3) An applicant that has reserved a name pursuant to subsection (2) may reserve the same name for additional 120-day periods. A person having a current reservation for a name may not apply for another 120-day period for the same name until 90 days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the subsection of subsection (1) that applies to the other person. Subject to 35-12-614(3), the transfer is effective when the secretary of state files the notice of transfer.

History: En. Sec. 6, Ch. 522, L. 1981; amd. Sec. 1306, Ch. 56, L. 2009; amd. Sec. 5, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language pertaining to reservation of names for former text (see 2011 Session Law for former text). Amendment effective October 1, 2011.

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-12-507. Repealed. Secs. 68, 70, Ch. 240, L. 2007.

History: En. Sec. 7, Ch. 522, L. 1981; amd. Sec. 23, Ch. 229, L. 1999.

35-12-508. Required information. A limited partnership shall maintain at its principal office the following information:

(1) a current list showing the full name and last-known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed articles of conversion or merger;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the 3 most recent years;

(7) a copy of any record made by the limited partnership during the past 3 years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(8) unless contained in a partnership agreement made in a record, a record stating:

(a) the amount of cash and a description and statement of the agreed value of the other benefits contributed and agreed to be contributed by each partner;

(b) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(c) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) any events, upon the happening of which, the limited partnership is to be dissolved and its activities wound up.

History: En. Sec. 8, Ch. 522, L. 1981; amd. Sec. 6, Ch. 268, L. 1997; amd. Sec. 66, Ch. 240, L. 2007; amd. Sec. 6, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) substituted "street and mailing address" for "business address"; in (2) substituted current language for former language that read "a copy of the certificate of limited partnership and all certificates of amendment, together with executed copies of any powers of attorney pursuant to which any certificate has been executed"; inserted (3) referring to articles of conversion or merger; deleted former (1)(d) that read: "(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years"; inserted (5) pertaining to copy of partnership agreement; inserted (6) pertaining to copy of financial statement; inserted (7) pertaining to copy of consent or vote of a partner; in (8) substituted "partnership agreement made in a record, a record stating" for "written partnership agreement, a writing setting out"; in (8)(a) substituted "other benefits contributed" for "other property or services contributed"; in (8)(c) substituted current language for former language that read "any right of a partner to receive or of a general partner to make distributions to a partner that include a return of all or any part of the partner's contribution"; in (8)(d) substituted "activities" for "affairs"; deleted former (2) that read: "(2) Records kept under this section must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours"; and made minor changes in style. Amendment effective October 1, 2011.

35-12-509. Nature, purpose, and duration of entity. (1) A limited partnership is an entity distinct from its partners' partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration.

History: En. Sec. 9, Ch. 522, L. 1981; amd. Sec. 7, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "A limited partnership may carry on any business that a partnership without limited partners may carry on." Amendment effective October 1, 2011.

35-12-510. Business transactions of partner with the partnership. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

History: En. Sec. 10, Ch. 522, L. 1981; amd. Sec. 12, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 at beginning deleted "Except as otherwise provided in the partnership agreement" and after "partnership and" deleted "subject to other applicable provisions of law"; and made minor changes in style. Amendment effective October 1, 2011.

Noncodified Section — Redundancy: Section 13, Ch. 216, L. 2011, was not codified because its text was identical to the text of this section.

35-12-511. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) knows of it;

(b) has received a notification of it;

(c) has reason to know it exists from all of the facts known to the person at the time in question; or

(d) has notice of it under subsection (3) or (4).

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as

general partners are general partners. Except as otherwise provided in subsection (4), the certificate is not notice of any other fact.

(4) A person has notice of:

(a) another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) a limited partnership's dissolution 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) a limited partnership's termination 90 days after the effective date of a statement of termination;

(d) a limited partnership's conversion under Title 35, chapter 12, part 15, 90 days after the effective date of the articles of conversion; or

(e) a merger under Title 35, chapter 12, part 15, 90 days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person, other than an individual, exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

History: En. Sec. 3, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-512. Powers. A limited partnership has the power to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

History: En. Sec. 8, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-513. Governing law. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

History: En. Sec. 9, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-514. Supplemental principles of law — rate of interest. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106.

History: En. Sec. 10, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-515. Effect of partnership agreement — nonwaivable provisions. (1) Except as otherwise provided in subsection (2), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary a limited partnership's power under 35-12-512 to sue, be sued, and defend in its own name;

(b) vary the law applicable to a limited partnership under 35-12-513;

(c) vary the requirements of 35-12-604;

(d) vary the information required under 35-12-508 or unreasonably restrict the right to information under 35-12-705 or 35-12-810, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) eliminate the duty of loyalty under 35-12-811, but the partnership agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable; and

(ii) specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that would otherwise violate the duty of loyalty;

(f) unreasonably reduce the duty of care under 35-12-811(3);

(g) eliminate the obligation of good faith and fair dealing under 35-12-707(2) and 35-12-811(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(h) vary the power of a person to dissociate as a general partner under 35-12-1019(1) except to require that the notice under 35-12-1018(1) be in a record;

(i) vary the power of a court to decree dissolution in the circumstances specified in 35-12-1202;

(j) vary the requirement to wind up the partnership's business as specified in 35-12-1205;

(k) unreasonably restrict the right to maintain an action;

(l) restrict the right of a partner under 35-12-1515(1) to approve a conversion or merger or the right of a general partner under 35-12-1515(2) to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) restrict rights under this chapter of a person other than a partner or a transferee.

History: En. Sec. 11, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-516. Consent and proxies of partners. Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney-in-fact.

History: En. Sec. 14, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-517 through 35-12-520 reserved.

35-12-521. Secretary of state to establish fees. The secretary of state shall set filing fees for processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, a certificate of amendment or restatement, a certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, or a certificate of cancellation or correction of a foreign limited partnership or for filing any other statement or report of a domestic or foreign limited partnership. The fees authorized in this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 65, Ch. 522, L. 1981; amd. Sec. 7, Ch. 268, L. 1997; amd. Sec. 24, Ch. 396, L. 2001.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

35-12-522. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

History: En. Sec. 58, Ch. 522, L. 1981; amd. Sec. 89, Ch. 370, L. 1987; amd. Sec. 76, Ch. 216, L. 2011; Sec. 35-12-1308, MCA 2009; redes. 35-12-522 by Code Commissioner, 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted "this chapter" for "35-12-1301 through 35-12-1307". Amendment effective October 1, 2011.

Part 6
Formation — Certificate of Limited Partnership

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Formation of cemetery associations, Title 35, ch. 20, part 1.

35-12-601. Formation of limited partnership — certificate of limited partnership. (1) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate must state:

(a) the name of the limited partnership, which must comply with 35-12-505;
(b) the information required by 35-7-105(1);
(c) the name and the business mailing address of each general partner;
(d) whether the limited partnership is a limited liability limited partnership; and
(e) additional information required by Title 35, chapter 12, part 15.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in 35-12-515(2) in a manner inconsistent with that section.

(3) If there has been substantial compliance with subsection (1), subject to 35-12-614(3) a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

(a) the partnership agreement prevails as to partners and transferees; and
(b) the filed certificate of limited partnership, statement of dissociation, termination, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

History: En. Sec. 11, Ch. 522, L. 1981; amd. Sec. 8, Ch. 268, L. 1997; amd. Sec. 17, Ch. 75, L. 2003; amd. Sec. 67, Ch. 240, L. 2007; amd. Sec. 32, Ch. 26, L. 2011; amd. Sec. 15, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 26 in (1)(c) substituted "business mailing address" for "complete business street address". Amendment effective October 1, 2011.

Chapter 216 substituted current language for former language that read: "(1) In order to form a limited partnership, a certificate of limited partnership must be executed, must be filed in the office of the secretary of state, and must set forth:

(a) the name of the limited partnership;

(b) the information required by 35-7-105(1);

(c) the name and the complete business street address of each general partner; and

(d) any other matters the general partners, in their sole discretion, determine to include.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section." Amendment effective October 1, 2011.

35-12-602. Amendments or restatement of certificate. (1) In order to amend its certificate of limited partnership, a limited partnership shall deliver to the secretary of state for filing an amendment or, pursuant to Title 35, chapter 12, part 15, articles of merger stating:

(a) the name of the limited partnership;

(b) the date of filing of its initial certificate; and

(c) the changes the amendment makes to the certificate as most recently amended or restated.

(2) A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(a) the admission of a new general partner;

(b) the dissociation of a person as a general partner; or

(c) the appointment of a person to wind up the limited partnership's activities under 35-12-1205(3) or (4).

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the secretary of state for filing a statement of change pursuant to 35-7-110 or a statement of correction pursuant to 35-12-616.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(5) A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

(6) Subject to 35-12-614(3), an amendment or restated certificate is effective when filed by the secretary of state.

History: En. Sec. 12, Ch. 522, L. 1981; amd. Sec. 9, Ch. 268, L. 1997; amd. Sec. 16, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) in introductory clause substituted current language for former language that read "A certificate of limited partnership is amended by filing a certificate of amendment in the office of the secretary of state. The certificate must set forth"; in (1)(b) inserted "initial"; in (1)(c) substituted "changes the amendment makes to the certificate as most recently amended or restated" for "amendments to the certificate"; in (2) in introductory clause substituted current language for former language that read "An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events"; in (2)(b) substituted "dissociation of a person as" for "withdrawal of"; in (2)(c) substituted current language for former language that read "the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner"; deleted former (3) that read: "(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement in the certificate was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect"; inserted (3) pertaining to general partner responsibilities regarding false information; in (4) substituted "purpose as determined by the limited partnership" for "purpose the general partners may determine"; deleted former (5) that read: "(5) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) if the amendment is filed within the 30-day period specified in subsection (2)"; in (5) substituted "be delivered to the secretary of state for filing" for "be executed and filed" and at end substituted "an amendment" for "a certificate of amendment"; inserted (6) pertaining to effective date of filed amendment or certificate; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Admission of new partner, 35-12-701, 35-12-801.

35-12-603. Statement of cancellation. (1) A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of cancellation that states:

(a) the name of the limited partnership;

(b) the date of filing of its certificate of limited partnership; and

(c) the reason for filing the certificate of cancellation;

(d) any other information determined by the general partners filing the statement or by a person appointed pursuant to 35-12-1205(3) or (4).

(2) Cancellation is effective upon filing with the secretary of state.

History: En. Sec. 13, Ch. 522, L. 1981; amd. Sec. 17, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) substituted current language for former language that read "A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth"; deleted former (4) that read: "(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate"; in (1)(d) substituted current language for former language that read "any other information the general partners filing the certificate may determine"; inserted (2) pertaining to effective date of cancellation; and made minor changes in style. Amendment effective October 1, 2011.

35-12-604. Signing of records. (1) Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(c) An amendment designating as general partner a person admitted under 35-12-1201(3)(b) following the dissociation of a limited partnership's last general partner must be signed by that person.

(d) An amendment required by 35-12-1205(3) following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(e) Any other amendment must be signed by:

(i) at least one general partner listed in the certificate;

(ii) every other person designated in the amendment as a new general partner; and

(iii) each person that the amendment indicates has dissociated as a general partner unless:

(A) the person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the secretary of state for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and to the extent the restated certificate effects a change under any other subsection of this subsection (1), the certificate must be signed in a manner that satisfies that subsection.

(g) A statement of cancellation must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to 35-12-1205(3) or (4) to wind up the dissolved limited partnership's activities.

(h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(i) Articles of merger must be signed as provided in 35-12-1513(1).

(j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate.

(k) A statement by a person pursuant to 35-12-1020(1)(d) stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to 35-12-704 must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(2) Any person may sign by an attorney-in-fact any record filed pursuant to this chapter.

History: En. Sec. 14, Ch. 522, L. 1981; amd. Sec. 10, Ch. 268, L. 1997; amd. Sec. 18, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state must be executed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners.

(b) Each certificate of amendment must be signed by at least one general partner and by each other general partner who is designated in the certificate as a new general partner.

(c) Each certificate of cancellation must be signed by all general partners.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated in the certificate are true." Amendment effective October 1, 2011.

35-12-605. Signing and filing pursuant to judicial order. (1) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the secretary of state for filing; or

(c) the secretary of state to file the record unsigned.

(2) If the person aggrieved under subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) may seek the remedies provided in subsection (1) in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed.

History: En. Sec. 15, Ch. 522, L. 1981; amd. Sec. 11, Ch. 268, L. 1997; amd. Sec. 19, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read "If the persons required by 35-12-604 to execute any certificate fail or refuse to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate." Amendment effective October 1, 2011.

35-12-606. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 16, Ch. 522, L. 1981; amd. Sec. 52, Ch. 131, L. 1983; amd. Sec. 12, Ch. 268, L. 1997; amd. Sec. 18, Ch. 75, L. 2003; amd. Sec. 15, Ch. 71, L. 2005.

35-12-607. Liability for false statement in certificate. (1) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, any person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record or caused another to sign it on the person's behalf and knew the information to be false at the time the record was signed; and

(b) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under 35-12-602, file a petition pursuant to 35-12-605, or deliver to the secretary of state for filing a statement of change pursuant to 35-7-108 or a statement of correction pursuant to 35-12-616.

(2) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

History: En. Sec. 17, Ch. 522, L. 1981; amd. Sec. 13, Ch. 268, L. 1997; amd. Sec. 22, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "If any certificate of limited partnership or certificate of amendment, restatement, or cancellation contains a false statement, any person who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on the person's behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who after the execution of the certificate knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel, restate, or amend the certificate or to file a petition for its cancellation, restatement, or amendment under 35-12-605." Amendment effective October 1, 2011.

Cross-References

Nature of partner's liability, 35-10-307.
Liability of limited partner, 35-12-703.

35-12-608. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 18, Ch. 522, L. 1981; amd. Sec. 14, Ch. 268, L. 1997.

35-12-609. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 19, Ch. 522, L. 1981.

35-12-610. Term and renewal of certification. (1) Certification of a limited partnership or a certificate of authority of a foreign limited partnership is effective for a term of 5 years from the date of filing or renewal of certification or the date of issuance of a certificate. Upon application for renewal of certification on forms furnished by the secretary of state, the certification may be renewed for another 5-year term.

(2) Not less than 90 days before the expiration date of certification of a limited partnership, the secretary of state shall notify the listed general partner or partners or specified agent of the pending expiration by addressing a notice to the last-known address of the general partner or partners or specified agent.

(3) If the general partner or partners or specified agent fails to file an application for renewal with the secretary of state within a 90-day period prior to the expiration date of the certification, the secretary of state shall cancel the certification.

(4) A registration in force on July 1, 1991, expires 5 years from the date of the filing of certification or on July 1, 1992, whichever is later, if renewal of the certification is not effected in the manner provided for in 35-12-610 through 35-12-613.

(5) A certificate of authority in force on July 1, 2011, expires 5 years from the date it was filed or on July 1, 2012, whichever is later, if renewal of certification of authority is not affected as provided in 35-12-610 or 35-12-618.

History: En. Sec. 1, Ch. 533, L. 1991; amd. Sec. 33, Ch. 26, L. 2011; amd. Sec. 24, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 26 in (1) in first sentence near beginning before "limited partnership" inserted "domestic or foreign" and after "certification" inserted "or the date of issuance of a certificate under 35-12-1303"; and made minor changes in style. Amendment effective October 1, 2011. The amendment by Ch. 216 rendered the amendment by Ch. 26 void.

Chapter 216 in (1) in first sentence inserted "limited partnership or a certificate of authority of a foreign" and inserted "or the date of issuance of a certificate"; inserted (5) pertaining to expiration of certificate of authority; and made minor changes in style. Amendment effective October 1, 2011.

35-12-611. Application for renewal of certification. The application for renewal of certification of a limited partnership must be executed and delivered to the secretary of state. The application must include but is not limited to the information required by 35-12-601.

History: En. Sec. 2, Ch. 533, L. 1991; amd. Sec. 15, Ch. 268, L. 1997; amd. Sec. 19, Ch. 75, L. 2003.

35-12-612. Filing of application for renewal of certification — issuance of certificate. (1) If the secretary of state finds that the application for renewal of certification of a limited partnership complies with the provisions of this part, the secretary of state shall, when all fees have been paid as provided by rule:

(a) endorse on the application the word "filed" and the month, day, and year of filing;

(b) file the original; and

(c) issue a certification letter.

(2) The secretary of state shall return to the general partner or partners submitting the application the certification letter.

History: En. Sec. 3, Ch. 533, L. 1991; amd. Sec. 20, Ch. 75, L. 2003.

35-12-613. Involuntary cancellation of certificate. For a certificate filed prior to July 1, 1991, the secretary of state shall cancel the certificate of limited partnership after July 1, 1992, if the certification is more than 5 years old and not renewed in accordance with this part.

History: En. Sec. 4, Ch. 533, L. 1991.

35-12-614. Delivery to and filing of records by secretary of state — effective time and date. (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, if all filing fees have been paid, the secretary of state shall file the record and upon request and payment of a fee:

(a) for a statement of dissociation, send:

(i) a copy of the filed statement to the person that the statement indicates has dissociated as a general partner; and

(ii) a copy of the filed statement to the limited partnership;

(b) for a statement of withdrawal, send:

(i) a copy of the filed statement to the person on whose behalf the record was filed; and

(ii) if the statement refers to an existing limited partnership, a copy of the filed statement to the limited partnership; and

(c) for all other records, send a copy of the filed record to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in 35-7-111 and 35-12-616, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

History: En. Sec. 20, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-615. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 9, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-13-221.

Trademarks — filing of facsimile copy, 30-13-341.

35-12-616. Correcting filed record. (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

(a) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) for the purposes of 35-12-511(3) and (4); and

(b) as to persons relying on the uncorrected record and adversely affected by the correction.

History: En. Sec. 21, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-617. Certificate of fact. (1) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and whether a statement of cancellation has been filed. A certificate of fact must state:

(a) the limited partnership's name;

(b) that it was duly formed under the laws of this state and the date of formation;

(c) whether the secretary of state has administratively dissolved the limited partnership;

(d) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;

(e) whether a statement of cancellation been filed by the secretary of state; and

(f) other facts of record in the office of the secretary of state that may be requested by the applicant.

(2) The secretary of state, upon request and payment of the requisite fee, shall furnish a certificate of fact for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, whether the certificate of authority was revoked, and whether a notice of cancellation was filed. A certificate of fact must state:

(a) the foreign limited partnership's name and any alternate name adopted under 35-12-1312(1) for use in this state;

(b) that it is authorized to transact business in this state;

(c) whether the secretary of state has revoked its certificate of authority and whether a notice of cancellation has been filed; and

(d) other facts of record in the office of the secretary of state that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate of fact or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

History: En. Sec. 23, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-618. Application for renewal of foreign limited partnership certificate of authority — requirements for appointed registered agent. (1) The application for renewal of a certificate of authority of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state.

(2) The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the information required under 35-7-105; and

(c) the name and business mailing address of each general partner.

History: En. Sec. 25, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-619 reserved.

35-12-620. Reinstatement following cancellation for failure to renew. (1) If a certificate of limited partnership was canceled under 35-12-610 for failure to renew, an application for reinstatement of the original certificate may be made to the secretary of state within 5 years after the effective date of the cancellation.

(2) The application must:

(a) state the name of the limited partnership and the date its certificate of limited partnership was canceled;

(b) state that the limited partnership's name satisfies the requirements of 35-12-505; and

(c) include the information required in 35-12-601.

(3) If the secretary of state determines that the information provided is sufficient and correct, the secretary of state shall reinstate the certificate of limited partnership and send confirmation to the limited partnership.

(4) When reinstated under this section, the certificate of limited partnership becomes effective as if it had not been canceled.

History: En. Sec. 2, Ch. 75, L. 2003.

Part 7
Limited Partners

35-12-701. Becoming limited partner. A person becomes a limited partner:

(1) as provided in the partnership agreement;

(2) as the result of a conversion or merger under Title 35, chapter 12, part 15; or

(3) with the consent of all the partners.

History: En. Sec. 20, Ch. 522, L. 1981; amd. Sec. 16, Ch. 268, L. 1997; amd. Sec. 26, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) A person becomes a limited partner:

(a) at the time the limited partnership is formed; or

(b) at any later time specified in the partnership agreement for becoming a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power." Amendment effective October 1, 2011.

Cross-References

General powers and liabilities of general partner, 35-12-803.

35-12-702. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 21, Ch. 522, L. 1981.

35-12-703. No liability as limited partner for limited partnership obligations. An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of a limited partnership solely by reason of being a limited partner even if the limited partner participates in the management and control of the limited partnership.

History: En. Sec. 22, Ch. 522, L. 1981; amd. Sec. 17, Ch. 268, L. 1997; amd. Sec. 40, Ch. 7, L. 2001; amd. Sec. 28, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language for former language that read: "(1) Except as provided in subsection (4), a limited partner is not liable for the obligations of a limited partnership unless, in addition to the exercise of the rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(d) taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) requesting or attending a meeting of partners;

(f) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business;

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) an amendment to the partnership agreement or certificates of limited partnership; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (2)(f) that the partnership states in writing may be subject to the approval or disapproval of limited partners;

(g) winding up the limited partnership pursuant to 35-12-1203; or

(h) exercise any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(4) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by 35-12-505(1)(b)(i) and (1)(b)(ii), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner." Amendment effective October 1, 2011.

Cross-References

Limited partnership defined, 35-12-504.

Partnership name not to contain surname of limited partner — exceptions, 35-12-505.

35-12-704. Person erroneously believing self to be limited partner. (1) Except as otherwise provided in subsection (2), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(b) withdraws from future participation as an owner in the enterprise by executing and delivering to the secretary of state for filing a statement of withdrawal under this section.

(2) A person that makes an investment described in subsection (1) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of conversion to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

History: En. Sec. 23, Ch. 522, L. 1981; amd. Sec. 1, Ch. 85, L. 1985; amd. Sec. 18, Ch. 268, L. 1997; amd. Sec. 29, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 in (1) in introductory clause near beginning substituted "makes an investment" for "makes a contribution", after "in the enterprise" substituted "is not liable for the" for "is not a general partner in the enterprise and is not bound by its", after "making the" substituted "investment" for "contribution", and after "rights of" inserted "or appropriate to"; in (1)(a) substituted "amendment, or statement of correction to be signed and delivered to the secretary of state for filing" for "amendment to be executed and filed"; in (1)(b) substituted "participation as an owner" for "equity participation", after "executing" substituted "and delivering to" for "and filing in the office of", and after "state" substituted "for filing a statement of" for "a certificate declaring"; in (2) substituted current language for former language that read "Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show that the person is not a general partner, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction"; in (2) and (3) substituted current language for former language that read "Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate, if any, is filed to show that the person is not a general partner, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Secretary of State to establish fees, 35-12-521.

35-12-705. Right of limited partner and former limited partner to information. (1) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) the information sought is directly connected to the limited partner's purpose.

(3) Within 10 days after receiving a demand pursuant to subsection (2), the limited partnership in a record shall inform the limited partner that made the demand:

(a) the information that the limited partnership will provide in response to the demand;

(b) when and where the limited partnership will provide the information; and

(c) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

(a) the information pertains to the period during which the person was a limited partner;

(b) the person seeks the information in good faith; and

(c) the person meets the requirements of subsection (2).

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) in the same manner as provided in subsection (3).

(6) If a limited partner dies, 35-12-1105 applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(10) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(11) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

History: En. Sec. 24, Ch. 522, L. 1981; amd. Sec. 30, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language regarding right of limited partner and former limited partner to information for former language on right to information that read: "Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable." Amendment effective October 1, 2011.

Cross-References

Rights of partners, 35-10-301; 35-10-402; 35-10-405; Title 35, ch. 10, part 5; 35-10-609.

Rights of estate, 35-12-1105.

35-12-706. No right or power as limited partner to bind limited partnership. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

History: En. Sec. 27, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-707. Limited duties of limited partners. (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

History: En. Sec. 31, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 8
General Partners

35-12-801. Becoming partner. A person becomes a general partner:

(1) as provided in the partnership agreement;

(2) under 35-12-1201(3)(b) following the dissociation of a limited partnership's last general partner;

(3) as the result of a conversion or merger under Title 35, chapter 12, part 15; or

(4) with the consent of all the partners.

History: En. Sec. 25, Ch. 522, L. 1981; amd. Sec. 19, Ch. 268, L. 1997; amd. Sec. 32, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on becoming a partner for former language on admission that read: "After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners." Amendment effective October 1, 2011.

35-12-802. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 26, Ch. 522, L. 1981; amd. Sec. 20, Ch. 268, L. 1997.

35-12-803. General partner's liabilities. (1) Except as otherwise provided in subsections (2) and (3), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under 35-12-809(2)(b).

History: En. Sec. 27, Ch. 522, L. 1981; amd. Sec. 2, Ch. 85, L. 1985; amd. Sec. 35, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on partner liability for former language on general powers and liabilities that read: "(1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners." Amendment effective October 1, 2011.

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Limited partners — liability to third parties, 35-12-703.

35-12-804. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 28, Ch. 522, L. 1981; amd. Sec. 1307, Ch. 56, L. 2009.

35-12-805. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 29, Ch. 522, L. 1981.

35-12-806. General partner as agent of limited partnership. (1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under 35-12-511(4) that the general partner lacked authority.

(2) An act of a general partner that is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

History: En. Sec. 33, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-807. Limited partnership liable for general partner's actionable conduct. (1) A limited partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If in the course of the limited partnership's activities or while acting with authority of the limited partnership a general partner receives or causes the limited partnership to receive money or property of a person not a partner and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

History: En. Sec. 34, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-808. Actions by and against partnership and partners. (1) To the extent not inconsistent with 35-12-803, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless the partner is personally liable for the claim under 35-12-803 and:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

History: En. Sec. 36, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-809. Management rights of general partner. (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) amend the partnership agreement;

(b) amend the certificate of limited partnership to add or, subject to 35-12-1515, delete a statement that the limited partnership is a limited liability limited partnership; and

(c) sell, lease, exchange, or otherwise dispose of all or substantially all of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (3) or (4) constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership.

History: En. Sec. 37, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-810. Right of general partner and former general partner to information. (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) in the limited partnership's principal office, required information; and

(b) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) at the location specified in subsection (1) if:

(a) the information or record pertains to the period during which the person was a general partner;

(b) the person seeks the information or record in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by 35-12-705(2).

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) in the same manner as provided in 35-12-705(3).

(5) If a general partner dies, 35-12-1105 applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under 35-12-1018(7)(b) or (7)(c).

History: En. Sec. 38, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-811. General standards of general partner's conduct. (1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3).

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

History: En. Sec. 39, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 9
Finance

35-12-901. Form of contributions. A contribution of a partner consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

History: En. Sec. 30, Ch. 522, L. 1981; amd. Sec. 40, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on form of contributions for former language that read: "The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services." Amendment effective October 1, 2011.

35-12-902. Liability for contributions. (1) A partner's obligation to contribute money or other property or other benefit or to perform services for a limited partnership is not excused by the partner's disability, death, or other inability to perform personally.

(2) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.

(3) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. A creditor of a limited partnership that extends credit or otherwise acts in reliance on an obligation described in subsection (1), without notice of any compromise under this subsection, may enforce the original obligation.

History: En. Sec. 31, Ch. 522, L. 1981; amd. Sec. 21, Ch. 268, L. 1997; amd. Sec. 41, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language in (1) and (2) for former language that read: "(1) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(2) Except as otherwise provided in the partnership agreement, a partner is liable to the limited partnership for any enforceable promise to contribute cash or property or to perform services regardless of whether the partner is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to 35-12-508, of the stated contribution that has not been made"; in (3) at beginning of first sentence deleted "Unless otherwise provided in the partnership agreement", in second sentence at beginning deleted "Notwithstanding a compromise so authorized", and after "obligation" substituted "described in subsection (1), without notice of any compromise under this subsection, may enforce the original obligation" for "after the partner signs a writing that, in either case, reflects the obligation and before the amendment or cancellation to reflect the compromise may enforce the precompromise obligation"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Nature of partner's liability, 35-10-307.

35-12-903. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 32, Ch. 522, L. 1981; amd. Sec. 22, Ch. 268, L. 1997.

35-12-904. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 33, Ch. 522, L. 1981; amd. Sec. 23, Ch. 268, L. 1997.

35-12-905. Sharing of distributions. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

History: En. Sec. 42, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 10
Distribution and Dissociation

35-12-1001. Interim distributions. A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

History: **En. Sec. 34, Ch. 522, L. 1981; amd. Sec. 24, Ch. 268, L. 1997; amd. Sec. 43, Ch. 216, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on interim distributions for former language that read: "Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up to the extent and at the times or on the happening of the events specified in the partnership agreement." Amendment effective October 1, 2011.

35-12-1002. Repealed. Sec. 97, Ch. 216, L. 2011.

History: **En. Sec. 35, Ch. 522, L. 1981; amd. Sec. 1308, Ch. 56, L. 2009.**

35-12-1003. Repealed. Sec. 97, Ch. 216, L. 2011.

History: **En. Sec. 36, Ch. 522, L. 1981; amd. Sec. 25, Ch. 268, L. 1997.**

35-12-1004. Repealed. Sec. 97, Ch. 216, L. 2011.

History: **En. Sec. 37, Ch. 522, L. 1981; amd. Sec. 26, Ch. 268, L. 1997.**

35-12-1005. Distributions in kind. A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to 35-12-1216(2), a limited partnership may distribute an asset in kind to the extent that each partner receives a percentage of the asset equal to the partner's share of distributions.

History: **En. Sec. 38, Ch. 522, L. 1981; amd. Sec. 27, Ch. 268, L. 1997; amd. Sec. 45, Ch. 216, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 216 at beginning of first sentence substituted "A partner does not have a right to demand or receive" for "Except as provided in writing in the partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive" and substituted language in second sentence for former language that read "Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset that is equal to the percentage in which the partner shares in distributions from the limited partnership"; and made minor changes in style. Amendment effective October 1, 2011.

35-12-1006. Right to distributions. When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

History: **En. Sec. 39, Ch. 522, L. 1981; amd. Sec. 1309, Ch. 56, L. 2009; amd. Sec. 46, Ch. 216, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 216 in first sentence in two places inserted "or transferee"; inserted second sentence pertaining to distributions being subject to offset; and made minor changes in style. Amendment effective October 1, 2011.

35-12-1007. Repealed. Sec. 97, Ch. 216, L. 2011.

History: **En. Sec. 40, Ch. 522, L. 1981.**

35-12-1008. Repealed. Sec. 97, Ch. 216, L. 2011.

History: **En. Sec. 41, Ch. 522, L. 1981; amd. Sec. 28, Ch. 268, L. 1997.**

35-12-1009. No distribution on account of dissociation. A person does not have a right to receive a distribution on account of dissociation.

History: **En. Sec. 44, Ch. 216, L. 2011.**

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1010. Limitations on distribution. (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7), the effect of a distribution under subsection (2) is measured:

(a) in the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt is incurred by the limited partnership; and

(b) in all other cases, as of the date:

(i) the distribution is authorized if the payment occurs within 120 days after that date; or

(ii) the payment is made if payment occurs more than 120 days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

History: En. Sec. 47, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1011. Liability for improper distributions. (1) A general partner that consents to a distribution made in violation of 35-12-1010 is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with 35-12-811.

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of 35-12-1010 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under 35-12-1010.

(3) A general partner against which an action is commenced under subsection (1) may:

(a) implead in the action any other person that is liable under subsection (1) and compel contribution from the person; and

(b) implead in the action any person that received a distribution in violation of subsection (2) and compel contribution from the person in the amount the person received in violation of subsection (2).

(4) An action under this section is barred if it is not commenced within 2 years after the distribution.

History: En. Sec. 48, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1012 through 35-12-1015 reserved.

35-12-1016. Dissociation as limited partner. (1) Except as provided in subsection (2), a person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) the person's expulsion as a limited partner pursuant to the partnership agreement;

(d) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(iii) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under 35-12-707(2); or

(iii) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as a limited partner;

(f) in the case of a person who is an individual, the person's death;

(g) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) the limited partnership's participation in a conversion or merger under Title 35, chapter 12, part 15, if the limited partnership:

(i) is not the converted or surviving entity; or

(ii) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

History: En. Sec. 49, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1017. Effect of dissociation as limited partner. (1) Upon a person's dissociation as a limited partner:

(a) subject to 35-12-1105, the person does not have further rights as a limited partner;

(b) the person's obligation of good faith and fair dealing as a limited partner under 35-12-707(2) continues only as to matters arising and events occurring before the dissociation; and

(c) subject to 35-12-1105 and Title 35, chapter 12, part 15, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner.

History: En. Sec. 50, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1018. Dissociation as general partner. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) the person's expulsion as a general partner pursuant to the partnership agreement;

(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(c) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 35-12-811; or

(c) the person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(a) becoming a debtor in bankruptcy;

(b) execution of an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(a) the person's death;

(b) the appointment of a guardian or general conservator for the person; or

(c) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in

the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under Title 35, chapter 12, part 15, if the limited partnership:

(a) is not the converted or surviving entity; or

(b) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

History: En. Sec. 51, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1019. Person's power to dissociate as general partner — wrongful dissociation. (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to 35-12-1018(1).

(2) A person's dissociation as a general partner is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) it occurs before the termination of the limited partnership and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial determination under 35-12-1018(5);

(iii) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(iv) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to 35-12-1405, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

History: En. Sec. 52, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1020. Effect of dissociation as general partner. (1) Upon a person's dissociation as a general partner:

(a) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) the person's duty of loyalty as a general partner under 35-12-811(2)(c) terminates;

(c) the person's duty of loyalty as a general partner under 35-12-811(2)(a) and (2)(b) and duty of care under 35-12-811(3) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) the person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

(e) subject to 35-12-1105 and Title 35, chapter 12, part 15, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

History: En. Sec. 53, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1021. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under Title 35, chapter 12, part 15, or merged out of existence under Title 35, chapter 12, part 15, the limited partnership is bound by an act of the person only if:

(a) the act would have bound the limited partnership under 35-12-806 before the dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1), the person dissociated as a general partner that caused the limited partnership to be bound is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1); and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

History: En. Sec. 54, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1022. Liability to other persons of person dissociated as general partner. (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3), the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under 35-12-803 on an obligation incurred by the limited partnership under 35-12-1211.

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) a general partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

History: En. Sec. 55, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 11
Assignment of Partnership Interests

35-12-1101. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 42, Ch. 522, L. 1981.

35-12-1102. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 43, Ch. 522, L. 1981; amd. Sec. 1310, Ch. 56, L. 2009.

35-12-1103. Rights of creditors of partner or transferee. (1) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment, with interest. To the extent charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries that the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) by the judgment debtor;

(b) with property other than limited partnership property, by one or more of the other partners; or

(c) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(4) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable partnership interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

History: En. Sec. 44, Ch. 522, L. 1981; amd. Sec. 1311, Ch. 56, L. 2009; amd. Sec. 58, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on rights of creditors of partner or transferee for former language on rights of creditors that read: "On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to the partner's partnership interest." Amendment effective October 1, 2011.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Relative rights of different creditors, 31-2-105.

35-12-1104. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 45, Ch. 522, L. 1981; amd. Sec. 29, Ch. 268, L. 1997.

35-12-1105. Power of estate of deceased partner. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in 35-12-1107 and, for the purpose of settling the estate, may exercise the rights of a current limited partner under 35-12-705.

History: En. Sec. 46, Ch. 522, L. 1981; amd. Sec. 1312, Ch. 56, L. 2009; amd. Sec. 59, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on power of estate of deceased partner for former language on power of estate of deceased or incompetent partner that read: "If a partner who is a natural person dies or a court of competent jurisdiction adjudges that partner to be incompetent to manage the partner's person or property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner." Amendment effective October 1, 2011.

35-12-1106. Partner's transferable interest. The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property.

History: En. Sec. 56, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1107. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest:

(a) is permissible;

(b) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(c) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3), or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

(a) distributions to which the transferor would otherwise be entitled; and

(b) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under 35-12-902 and 35-12-1011. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

History: En. Sec. 57, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 12
Dissolution

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-12-1201. Nonjudicial dissolution. Except as otherwise provided in 35-12-1201, a limited partnership is dissolved and its affairs may be wound up only upon the occurrence of of any the following:

(1) on the happening of an event specified in the partnership agreement;

(2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) after the dissociation of a person as a general partner:

(a) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(b) if the limited partnership does not have a remaining general partner, the filing of the dissolution with the secretary of state unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the secretary of state.

History: En. Sec. 47, Ch. 522, L. 1981; amd. Sec. 30, Ch. 268, L. 1997; amd. Sec. 60, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on nonjudicial dissolution for former language that read: "A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in writing in the partnership agreement;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permits the business of the limited

partnership to be carried on by the remaining general partner and the remaining general partner does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202." Amendment effective October 1, 2011.

35-12-1202. Judicial resolution. On application by a partner, the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

History: En. Sec. 48, Ch. 522, L. 1981; amd. Sec. 61, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 near beginning after "by" deleted "or for", after "may" substituted "order" for "decree a", and after "on the" substituted "activities of the limited partnership" for "business"; and made minor changes in style. Amendment effective October 1, 2011.

35-12-1203. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 49, Ch. 522, L. 1981; amd. Sec. 1313, Ch. 56, L. 2009.

35-12-1204. Repealed. Sec. 97, Ch. 216, L. 2011.

History: En. Sec. 50, Ch. 522, L. 1981; amd. Sec. 206, Ch. 368, L. 1991.

35-12-1205. Winding up. (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in 35- 12-603, and perform other necessary acts; and

(b) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) has the powers of a general partner under 35-12-1211; and

(b) shall promptly amend the certificate of limited partnership to state:

(i) that the limited partnership does not have a general partner;

(ii) the name of the person that has been appointed to wind up the limited partnership; and

(iii) the business mailing address of the person.

(4) On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities if:

(a) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3); or

(b) the applicant establishes other good cause.

History: En. Sec. 62, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1206 through 35-12-1210 reserved.

35-12-1211. Power of general partner and person dissociated as general partner to bind partnership after dissolution. (1) A limited partnership is bound by a general partner's act after dissolution that:

(a) is appropriate for winding up the limited partnership's activities; or

(b) would have bound the limited partnership under 35-12-806 before dissolution if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) at the time the other party enters into the transaction:

(i) less than 2 years has passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) the act:

(i) is appropriate for winding up the limited partnership's activities; or

(ii) would have bound the limited partnership under 35-12-806 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

History: En. Sec. 63, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1212. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and person dissociated as general partner. (1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under 35-12-1211(1) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under 35-12-1211(2), the person is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

History: En. Sec. 64, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1213. Known claims against dissolved limited partnership. (1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2).

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(a) specify the information required to be included in a claim;

(b) provide a mailing address to which the claim is to be sent;

(c) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;

(d) state that the claim will be barred if not received by the deadline; and

(e) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) are met and:

(a) the claim is not received by the specified deadline; or

(b) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

History: En. Sec. 65, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1214. Other claims against dissolved limited partnership. (1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within 5 years after publication of the notice; and

(d) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on 35-12-803.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under 35-12-1213;

(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) against the dissolved limited partnership to the extent of its undistributed assets;

(b) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) against any person liable on the claim under 35-12-803.

History: En. Sec. 66, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1215. Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under 35-12-1213 or 35-12-1214, any corresponding claim under 35-12-803 is also barred.

History: En. Sec. 67, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1216. Disposition of assets — when contributions required. (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under 35-12-1022 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under subsection (3)(a) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by subsection (3)(b), further additional contributions are determined and due in the same manner as provided in that subsection.

(4) A person that makes an additional contribution under subsection (3)(b) or (3)(c) may recover from any person whose failure to contribute under subsection (3)(a) or (3)(b) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner or a person appointed by a court to represent creditors of a limited partnership or a partner may enforce a person's obligation to contribute under subsection (3).

History: En. Sec. 68, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 13
Foreign Limited Partnerships

35-12-1301. Governing law. (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which a foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

History: En. Sec. 51, Ch. 522, L. 1981; amd. Sec. 69, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on governing law for former language that read: "Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state." Amendment effective October 1, 2011.

35-12-1302. Application for certificate of authority. (1) Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(a) the name of the foreign limited partnership and, if the name does not comply with 35-12-505, an alternate name adopted pursuant to 35-12-1312(1);

(b) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized and the date of the foreign limited partnership's formation;

(c) the business mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the business mailing address of the required office;

(d) the information required in 35-7-105(1);

(e) the name and business mailing address of each of the foreign limited partnership's general partners; and

(f) whether the foreign limited partnership is a foreign limited liability limited partnership.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import dated within 6 months of its submission signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

History: En. Sec. 52, Ch. 522, L. 1981; amd. Sec. 53, Ch. 131, L. 1983; amd. Sec. 31, Ch. 268, L. 1997; amd. Sec. 21, Ch. 75, L. 2003; amd. Sec. 16, Ch. 71, L. 2005; amd. Sec. 35, Ch. 26, L. 2011; amd. Sec. 70, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 26 in (1)(d) before "address" inserted "business mailing"; in (1)(e) before "address" inserted "mailing"; and in (1)(f) before "address" inserted "business mailing". Amendment effective October 1, 2011. The amendment by Ch. 216 rendered the amendment by Ch. 26 void.

Chapter 216 substituted current language on application for certificate of authority for former language on registration that read: "Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(2) the state in which the foreign limited partnership was formed and the date of the foreign limited partnership's formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint. An agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

(4) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if an agent has not been appointed pursuant to subsection (3) or, if an agent was appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(5) the address of the office required to be maintained in the state of the foreign limited partnership's organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn." Amendment effective October 1, 2011.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-12-1303. Repealed. Sec. 97, Ch. 216, L. 2011.
History: En. Sec. 53, Ch. 522, L. 1981; amd. Sec. 54, Ch. 131, L. 1983; amd. Sec. 22, Ch. 75, L. 2003.

35-12-1304. Repealed. Sec. 97, Ch. 216, L. 2011.
History: En. Sec. 54, Ch. 522, L. 1981; amd. Sec. 17, Ch. 71, L. 2005.

35-12-1305. Repealed. Sec. 97, Ch. 216, L. 2011.
History: En. Sec. 55, Ch. 522, L. 1981.

35-12-1306. Repealed. Sec. 97, Ch. 216, L. 2011.
History: En. Sec. 56, Ch. 522, L. 1981.

35-12-1307. Cancellation of certificate of authority — effect of failure to have certificate. (1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership shall deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under 35-12-614.

(2) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited partnership to have a certificate of authority to transact business in in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action or proceeding in this state.

(4) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

History: En. Sec. 57, Ch. 522, L. 1981; amd. Sec. 75, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 inserted (1) pertaining to canceling a certificate of authority; in (2) after "business in this state" deleted "without registration" and after "has" substituted "a certificate of authority to transact business in this state" for "registered"; in (3) near beginning after "partnership to" substituted reference to certificate for "register"; in (4) after "A" deleted "limited", after "liable" substituted "for the obligations" for "as a general partner", and at end substituted "certificate of authority" for "registration"; in (5) after "without" substituted "a certificate of authority or cancels its certificate of authority" for "registration"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Effect of transacting business without certificate, 30-13-215.

35-12-1308. Renumbered 35-12-522. Code Commissioner, 2011.

35-12-1309. Activities not constituting transacting business. (1) Activities of a foreign limited partnership that do not constitute transacting business in this state within the meaning of 35-12-1309 through 35-12-1313 include:

(a) maintaining, defending, and settling an action or proceeding;

(b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, and maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

(j) transacting business in interstate commerce.

(2) For purposes of 35-12-1309 through 35-12-1313, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

History: En. Sec. 71, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1310. Filing of certificate of authority. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, shall prepare, sign, and file a certificate of authority to transact business in this state, and shall, upon payment of a fee, send a copy of the filed certificate to the foreign limited partnership or its representative.

History: En. Sec. 72, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1311. Application for renewal of foreign limited partnership certification — requirement for appointed registered agent. (1) The application for renewal of certification of a foreign limited partnership must be executed by the general partners and delivered to the secretary of state. The application must include the following information:

(a) the name of the foreign limited partnership or the fictitious name adopted by a foreign limited partnership authorized to transact business in this state because its real name is unavailable;

(b) the name and address of the registered agent appointed by the foreign limited partnership for the service of process on the foreign limited partnership; and

(c) the name and business mailing address of each general partner.

(2) A registered agent appointed under this section must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state.

History: En. Sec. 34, Ch. 26, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1312. Noncomplying name of foreign limited partnership. (1) A foreign limited partnership whose name does not comply with 35-12-505 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with 35-12-505. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with Title 30, chapter 13, part 2. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under Title 30, chapter 13, part 2, to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with 35-12-505, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

History: En. Sec. 73, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1313. Revocation of certificate of authority. (1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) if the foreign limited partnership does not:

(a) pay any fee, tax, or penalty due to the secretary of state under this chapter or other law;

(b) appoint and maintain an agent for service of process as required by 35-7-105; or

(c) deliver for filing a statement of a change under 35-7-108 within 30 days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state shall prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state or, if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the secretary of state sends the copy; and

(b) the foreign limited partnership's failures to comply with subsection (1) that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

History: En. Sec. 74, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 14
Derivative Actions

35-12-1401. Derivative action. A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) the partner first makes a demand on the general partners requesting that they cause the limited partnership to bring an action to enforce the right and the general partners do not bring the action within a reasonable time; or

(2) a demand would be futile.

History: En. Sec. 59, Ch. 522, L. 1981; amd. Sec. 78, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language pertaining to derivative action for former language on right of action that read: "A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed." Amendment effective October 1, 2011.

35-12-1402. Proper plaintiff. A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to the action occurred; or

(2) whose status as a partner devolved by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

History: En. Sec. 60, Ch. 522, L. 1981; amd. Sec. 32, Ch. 268, L. 1997; amd. Sec. 79, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language relating to proper plaintiff for former language that read: "In a derivative action, the plaintiff must be a partner at the time of bringing the action and must have been a partner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner must have devolved by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction." Amendment effective October 1, 2011.

35-12-1403. Pleading. In a derivative action, the complaint must state with particularity:

(1) the date and content of the plaintiff's demand and the general partners' response to the demand; or

(2) why the demand should be excused as futile.

History: En. Sec. 61, Ch. 522, L. 1981; amd. Sec. 80, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on pleading for former language that read: "In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort." Amendment effective October 1, 2011.

35-12-1404. Proceeds and expenses. (1) Except as provided in subsection (2):

(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(b) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, from the recovery of the limited partnership.

History: En. Sec. 62, Ch. 522, L. 1981; amd. Sec. 1314, Ch. 56, L. 2009; amd. Sec. 81, Ch. 216, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 216 substituted current language on proceeds and expenses for former language on proceeds that read: "If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to account to the limited partnership for the remainder of the proceeds received by the plaintiff." Amendment effective October 1, 2011.

35-12-1405. Direct action by partner. (1) Subject to subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

History: En. Sec. 77, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 15
Conversion

35-12-1501. Definitions. As used in this part, the following definitions apply:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to 35-12-1502 through 35-12-1505.

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to 35-12-1502.

(6) "General partner" means a general partner of a limited partnership.

(7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership, including a limited liability partnership; a limited partnership, including a limited liability limited partnership; a limited liability company; a business trust; a corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) "Organizational document" means:

(a) for a domestic or foreign general partnership, its partnership agreement;

(b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) for a domestic or foreign limited liability company, its articles of organization and operating agreement or comparable records as provided in its governing statute;

(d) for a business trust, its agreement of trust and declaration of trust;

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute or comparable records as provided in its governing statute; and

(f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) by the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

History: En. Sec. 82, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1502. Conversion. (1) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to 35-12-1501 through 35-12-1505 and a plan of conversion if:

(a) the other organization's governing statute authorizes the conversion;

(b) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion must be in a record and must include:

(a) the name and form of the organization before conversion;

(b) the name and form of the organization after conversion;

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) the organizational documents of the converted organization.

History: En. Sec. 83, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1503. Action on plan of conversion by converting limited partnership. (1) Subject to 35-12-1515, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to 35-12-1515 and any contractual rights, after a conversion is approved, and at any time before a filing is made under 35-12-1504, a converting limited partnership may amend the plan or abandon the planned conversion:

(a) as provided in the plan; and

(b) except as prohibited by the plan, by the same consent as was required to approve the plan.

History: En. Sec. 84, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1504. Filings required for conversion — effective date. (1) After a plan of conversion is approved:

(a) a converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(i) a statement that the limited partnership has been converted into another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute;

(iii) the date the conversion is effective under the governing statute of the converted organization;

(iv) a statement that the conversion was approved as required by this chapter;

(v) a statement that the conversion was approved as required by the governing statute of the converted organization;

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of 35-12-1505(3); and

(vii) a statement that the certificate of limited partnership is to be canceled as of the date on which the conversion took effect; and

(b) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by 35-12-601:

(i) a statement that the limited partnership was converted from another organization;

(ii) the name and form of the organization and the jurisdiction of its governing statute; and

(iii) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) In the case of a limited partnership, the filing of articles of organization under subsection (1)(a) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(3) A conversion becomes effective:

(a) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

History: En. Sec. 85, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1505. Effect of conversion. (1) An organization that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

(b) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization; and

(e) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

History: En. Sec. 86, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1506 through 35-12-1510 reserved.

35-12-1511. Merger. (1) A limited partnership may merge with one or more other constituent organizations pursuant to 35-12-1512 through 35-12-1514, this section, and a plan of merger if:

(a) the governing statute of each of the other organizations authorizes the merger;

(b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) the name and form of each constituent organization;

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

History: En. Sec. 87, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1512. Action on plan of merger by constituent limited partners. (1) Subject to 35-12-1515, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to 35-12-1515 and any contractual rights, after a merger is approved and at any time before a filing is made under 35-12-1513, a constituent limited partnership may amend the plan or abandon the planned merger:

(a) as provided in the plan; and

(b) except as prohibited by the plan, with the same consent as was required to approve the plan.

History: En. Sec. 88, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1513. Filings required for merger — effective date. (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) each other preexisting constituent organization, by an authorized representative.

(2) The articles of merger must include:

(a) the name and form of each constituent organization and the jurisdiction of its governing statute;

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and if the surviving organization is created by the merger, a statement to that effect;

(c) the date the merger is effective under the governing statute of the surviving organization;

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(ii) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(f) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of 35-12-1514(2); and

(h) any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(4) A merger becomes effective under this part:

(a) if the surviving organization is a limited partnership, upon the later of:

(i) compliance with subsection (3); or

(ii) subject to 35-12-614(3), as specified in the articles of merger; or

(b) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

History: En. Sec. 89, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1514. Effect of merger. (1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

(b) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of chapter 12;

(i) if the surviving organization is created by the merger:

(i) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(ii) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(j) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in 35-7-113.

History: En. Sec. 90, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1515. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status. (1) If a partner of a converting limited partnership or constituent limited partnership will have personal liability with respect to a converted organization or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner unless:

(a) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(b) the partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

History: En. Sec. 91, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1516 through 35-12-1519 reserved.

35-12-1520. Liability of general partner after conversion or merger. (1) A conversion or merger under this part does not discharge any liability under 35-12-803 and 35-12-1022 of a person that was a general partner in or dissociated as a general partner from a converting limited partnership or constituent limited partnership, but:

(a) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) for the purposes of applying those provisions, the converted organization or surviving organization is considered to be the converting limited partnership or constituent limited partnership; and

(c) if a person is required to pay any amount under this subsection (1):

(i) the person has a right of contribution from each other person that was liable as a general partner under 35-12-803 when the obligation was incurred and has not been released from the obligation under 35-12-1022; and

(ii) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if, at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that:

(A) the converted organization or surviving organization is the converting limited partnership or constituent limited partnership;

(B) the converting limited partnership or constituent limited partnership is not a limited liability limited partnership; and

(C) the person is a general partner in the converting limited partnership or constituent limited partnership; and

(b) a person that was dissociated as a general partner from a converting limited partnership or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted organization or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective if:

(i) immediately before the conversion or merger became effective the converting limited partnership or surviving limited partnership was a not a limited liability limited partnership; and

(ii) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership, the converting limited partnership or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting limited partnership or constituent limited partnership.

History: En. Sec. 92, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1521. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under 35-12-806; and

(b) at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that the converted or surviving business is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting limited partnership or constituent limited partnership binds the converted organization or surviving organization after the conversion or merger becomes effective if:

(a) before the conversion or merger became effective, the act would have bound the converting limited partnership or constituent limited partnership under 35-12-806 if the person had been a general partner; and

(b) at the time the third party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted organization or surviving organization is the converting limited partnership or constituent limited partnership and that the person is a general partner in the converting limited partnership or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted organization or surviving organization to incur an obligation under subsection (1) or (2), the person is liable:

(a) to the converted organization or surviving organization for any damage caused to the organization arising from the obligation; and

(b) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

History: En. Sec. 93, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

35-12-1522. Part not exclusive. This part does not preclude an entity from being converted or merged under other law.

History: En. Sec. 94, Ch. 216, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

CHAPTER 13
MINING PARTNERSHIPS

Part 1 — Formation

35-13-101. When a mining partnership exists.
35-13-102. Express agreement not necessary to formation.

Part 2 — Relations Between Partners and with Third Persons

35-13-201. When contract in writing is binding.
35-13-202. Owners of majority interest govern.
35-13-203. Mine — partnership property.
35-13-204. Profits and losses — how shared.
35-13-205. Lien of partner for debts due creditors.
35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner.
35-13-207. Purchaser takes subject to liens — exception for good faith purchaser.
35-13-208. When purchaser takes with notice of liens.

Chapter Cross-References

Abuse of property held jointly or in common — action, 70-19-202.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2
Relations Between Partners and with Third Persons

Part Cross-References

Relations among partners, partnerships, and third persons, Title 35, ch. 10, parts 3 and 4.

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses of the partnership in the proportion that the interest or share the member owns in the mine bears to the whole partnership capital or whole number of shares.

History: En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003; amd. Sec. 1315, Ch. 56, L. 2009.

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors of the partnership and for money advanced by the member for its uses. This lien exists notwithstanding an agreement among the partners that it may not exist.

History: En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004; amd. Sec. 1316, Ch. 56, L. 2009.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey the partner's interest in the mine and business without dissolving the partnership. The purchaser from the date of purchase becomes a member of the partnership.

History: En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006; amd. Sec. 1317, Ch. 56, L. 2009.

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors of the partnership or advances made for the benefit of the partnership unless the purchaser purchased in good faith for a valuable consideration without notice of the lien.

History: En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007; amd. Sec. 1318, Ch. 56, L. 2009.

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.

CHAPTER 14
RESERVED

CHAPTER 15
COOPERATIVE ASSOCIATIONS

Part 1 — General

35-15-101. Reserved power of regulation.
35-15-102. Requirements of chapter exclusive.
35-15-103. Powers.

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35-15-201. Incorporation.
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35-15-401. Classes of stock.
35-15-402. Forfeiture of stock for nonpayment — reissuance.
35-15-403. Assignment of stock.
35-15-404. Share exempt from attachment and execution — sale upon death of member.
35-15-405 through 35-15-410 reserved.
35-15-411. Disposal of earnings — dividends — reserve fund — educational fund.
35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years.

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35-15-501. Merger or consolidation authorized.
35-15-502. Plan for merger or consolidation.
35-15-503. Meeting to consider plan — notice.
35-15-504. Filing of documents of merger or consolidation — effective date.
35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired.
35-15-506. Sale or disposition of assets.
35-15-507. Statute of limitations.

Chapter Cross-References

Fire department relief associations, 19-18-102.
Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.
Agricultural associations, Title 35, ch. 16.
Cooperative agricultural marketing associations, Title 35, ch. 17.
Livestock protective associations, Title 81, ch. 6.

Part 1
General

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable. Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).

Cross-References

Effect of merger or consolidation, 35-15-505.

35-15-103. Powers. (1) Associations formed under this chapter are bodies corporate and politic for the period for which they are organized, which may be of perpetual duration.

(2) An association formed under this chapter may:

(a) sue and be sued;

(b) have a common seal that the association may alter or renew at pleasure;

(c) own, possess, and enjoy real and personal property necessary for the transaction of business and sell and dispose of the property; and

(d) borrow money and pledge property, both real and personal, to secure the payment of any borrowed money.

(3) Associations formed under this chapter have all powers necessary to carry into effect the objects for which the associations may be formed, including those powers usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws relating to similar corporations that are not limited or enlarged by this chapter.

History: En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205; amd. Sec. 1, Ch. 109, L. 2001.

Cross-References

Effect of merger or consolidation, 35-15-505.

Part 2
Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.

35-15-201. Incorporation. (1) Whenever two or more persons desire to incorporate as a cooperative association for the purpose of trade or of carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, the persons shall prepare a statement to that effect that also sets forth:

(a) the name of the proposed cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry that the association intends to carry out.

(2) In addition to the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with the liability provisions set forth in 35-1-216.

(3) The statement, accompanied by the required filing fee, set and deposited in accordance with 2-15-405, must be filed in the office of the secretary of state as the articles of incorporation of

the association. After receiving the statement and the fee, the secretary of state shall issue to the persons forming the association a license as commissioners to open books for subscription to the capital stock of the association at a time and place that the persons forming the association may determine.

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201; amd. Sec. 31, Ch. 174, L. 1983; amd. Sec. 3, Ch. 559, L. 1987; amd. Sec. 207, Ch. 368, L. 1991; amd. Sec. 2, Ch. 109, L. 2001; amd. Secs. 25, 29(2), Ch. 396, L. 2001.

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

Cross-References

Assignment of stock, 35-15-403.

35-15-203. First meeting. As soon as the initial shares of the capital stock have been subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting other business properly before them. Notice of the meeting must be given to each subscriber by mailing the notice, properly addressed, at least 10 days before the meeting. The notice must contain the object, time, and place of the meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part); amd. Sec. 3, Ch. 109, L. 2001.

Cross-References

Stockholders' meetings, 35-15-302.

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of the first meeting, including a copy of the notice provided for in 35-15-203, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office. The report must be executed by at least a majority of the commissioners and must be filed in the office of the secretary of state along with any required filing fee. The secretary of state shall, upon filing the report, issue a certificate of the completed organization of the association.

(2) Upon the filing of the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1), the association is considered to be fully organized and may engage in business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 32, Ch. 174, L. 1983; amd. Sec. 5, Ch. 109, L. 2001.

Cross-References

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

35-15-205. Amendment of articles of incorporation — fee. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation must be first approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting on the issue at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth the amendment must be executed on behalf of the association by its president or vice president and attested to by its secretary. The certificate must be filed in the office of the secretary of state, who shall issue a certificate of amendment of the articles of incorporation, for which the secretary of state must receive a fee that is set and deposited in accordance with 2-15-405.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 33, Ch. 174, L. 1983; amd. Sec. 6, Ch. 109, L. 2001; amd. Secs. 26, 29(2), Ch. 396, L. 2001.

Cross-References

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

35-15-207 through 35-15-209 reserved.

35-15-210. Fees for filing, copying, and services. (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 4, Ch. 109, L. 2001.

35-15-211. Filing of facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 4, Ch. 273, L. 1989; amd. Sec. 10, Ch. 290, L. 1997.

Cross-References

Assumed business name — filing of facsimile copy, 30-113-221.

Part 3
Shareholders, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus

5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: **En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).**

Cross-References

First meeting of subscribers, 35-15-203.
Assignment of stock, 35-15-403.

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by the stockholder may be read in the meeting and must be equivalent to a vote of each of the signing stockholders, provided the stockholder has been previously notified in writing of the exact motion or resolution upon which the vote is taken and a copy of the motion or resolution is forwarded with and attached to the mailed vote.

History: **En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212; amd. Sec. 1319, Ch. 56, L. 2009.**

Cross-References

Assignment of stock, 35-15-403.

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: **(1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).**

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: **En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part); amd. Sec. 34, Ch. 174, L. 1983.**

Part 4
Shares, Dividends, and Distributions

Part Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.
Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.
Stock of cooperative agricultural marketing associations, 35-17-302.
Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-15-401. Classes of stock. (1) The purchase price of the shares of stock must be set by the cooperative association and may be made payable in installments.

(2) A cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock may not have voting power and may not participate in the management and affairs of the association. The owners of preferred stock shall share in the profits of the association to the extent determined by the cooperative association. The common stock may be divided into classes of different values, and the owners of the common stock shall share in the profits of the association as determined by the cooperative association. However, the owners of common stock in the different classes have the same power and voting rights in the association.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part); amd. Sec. 7, Ch. 109, L. 2001.

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-403. Assignment of stock. An assignment of stock may not be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On a question a stockholder may not have more than one vote. Every assignment of stock on which there remains any portion unpaid must be recorded in the books of the association, and each stockholder is jointly and severally liable with the association for the debts of the association to the extent of the amount that is unpaid upon the share held by the stockholder. An assignor may not be released from the indebtedness by reason of any assignment of the assignor's share but remains jointly liable with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208; amd. Sec. 1320, Ch. 56, L. 2009.

Cross-References

Limit on subscription or control of common stock — one share per person, 35-15-202.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member is exempt from seizure on attachment or sale under execution.

(2) Upon a member's death, the share must be sold by the association and the proceeds, after deducting all liabilities to the association, must be delivered to the deceased member's heirs.

History: En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209; amd. Sec. 1321, Ch. 56, L. 2009.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: **En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: **En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.**

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).**

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).**

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: **En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).**

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4); amd. Sec. 35, Ch. 174, L. 1983.

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations that are parties to the plan become a single association. In the case of a merger, the surviving association is that association designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations that are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment of the title caused by the merger or consolidation. The right of any creditor may not be impaired by the merger or consolidation without the creditor's consent.

(3) This part may not be construed to impair the obligation of any contract to which any of the constituents was a party at the date of consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219; amd. Sec. 1322, Ch. 56, L. 2009.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).

CHAPTER 16
AGRICULTURAL ASSOCIATIONS

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35-16-403. Petition to district court for creation of debt.
35-16-404. Notice of hearing of petition — hearing — order of court.
35-16-405. Execution and record of mortgage — lien.
35-16-406. Foreclosure of mortgage — procedure — tax levy.

Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.
Cooperative associations, Title 35, ch. 15.
Cooperative agricultural marketing associations, Title 35, ch. 17.
Conservation districts, Title 76, ch. 15.

Part 1
General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: **En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.**

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: **En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.**

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: **En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.**

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Shares of business corporations, Title 35, ch. 1, part 6.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Shares of cooperative associations, Title 35, ch. 15, part 4.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.
Stock of cooperative agricultural marketing associations, 35-17-302.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.
Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302; amd. Sec. 4, Ch. 559, L. 1987; amd. Sec. 208, Ch. 368, L. 1991.

Cross-References

Directors — number — powers, 35-16-315.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: **En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.**

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: **En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.**

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: **En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.**

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: **En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.**

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.

Cross-References

Directors — number — powers, 35-16-315.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.

35-16-210. Existing associations — reorganization under chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions of this chapter desiring to come within the provisions of this chapter may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions of this chapter and request 10 or more of their members qualified as provided in this chapter to prepare and file, in the county that they select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If after petitioning not less than two-thirds of the stockholders or members of the cooperative or other corporation, association, society, or group of individuals either file with the corporation or district their written consent to the reorganization or petition to become members, in accordance with the provisions of this chapter, or both, the board of directors or other governing board of the existing cooperative or other corporation, association, society, or group of individuals must be authorized to, through proper officers, transfer to the new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions of this section, consenting to the reorganization but not including lands in the reorganized corporation or district, is entitled to a certificate or shares of stock or other evidence of membership in the reorganized corporation or district of the par value equal to the value of the stockholder's or member's certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of the reorganization and is to this extent a stockholder or member. However, any stockholder or member of the corporation or group of individuals that are reorganizing may not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325; amd. Sec. 1323, Ch. 56, L. 2009.

Cross-References

Objection to notice of hearing of petition for creation of debt, 35-16-404.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. If any stockholder or member of an existing cooperative or other corporation, association, society, or group of individuals declines to consent to the transfer or refuses to become a member of the new organization, the stockholder or member shall, within 30 days after receiving written notice of the transfer of assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business a petition praying for the net value of the stockholder's or member's equity in the cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified in this section, file a claim for appraisal and settlement, it is barred.

History: En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326; amd. Sec. 1324, Ch. 56, L. 2009.

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) An agricultural association or company, either cooperative stock or nonprofit nonstock, existing on July 1, 1921, or organized under the laws of Montana after that date may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders must be exercised by duly elected delegates at any meeting of delegates that may be called. They shall elect officers and transact business in the same manner that the association members or stockholders are empowered to do. The officers and board of directors that the delegates may elect must be known as "general officers" or "general board of directors".

(b) stockholders or members of the cooperative stock or nonprofit nonstock agricultural associations or companies must be grouped into locals in the districts that the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. The delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members that the delegate represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979; amd. Sec. 1325, Ch. 56, L. 2009.

Cross-References

Voting proxies, 35-16-311.

Elections, 35-16-312, 35-16-313.

Part 3
Members and Directors

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.
Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.
Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.
Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.
Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.

Cross-References

Corporate indebtedness as lien upon membership lands, 35-16-401.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions of this chapter, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm land within this state to become members, upon the holder of title or evidence of title, in manner and form that may be required by the laws of Montana and the rules of the corporation or district or its bylaws, applying for membership to the officers of the corporation or district by written application, duly acknowledged:

(a) containing a full, true, and correct description of the land owned by the applicant and proposed to be contained in the corporation or district;

(b) containing a statement of the applicant's desire to become a member and the applicant's consent to submit the applicant's land to the provisions of this chapter and to the administration of the corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the land owned by the applicant and proposed to be submitted to the corporation or district, its objects and purposes.

(2) If the application is in proper form and the applicant is the holder of title or evidence of title to the land described and the uses of the land as represented in the petition are similar to the uses of land already included in the corporation or district, a full, true, and correct copy of the application must be made and filed in the office of principal place of business of the corporation or district and the original application must be filed and recorded in the office of the county clerk and recorder of the county in which the land or the greater portion of the land is located. Upon filing, the applicant is entitled to evidence of temporary membership, in shares or units of membership, in a similar manner as the original members and the land described in the petition must be construed to be a part of the corporation or district to all intents and purposes as though originally incorporated in the corporation or district. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, the new member or stockholder is entitled to full membership in the corporation or district.

History: En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306; amd. Sec. 1326, Ch. 56, L. 2009.

35-16-303. Withdrawal of membership land — procedure. (1) A person who holds title or evidence of title to membership land included in a corporation or district organized under the provisions of this chapter and who desires to withdraw the person's land from the corporation or district may do so upon:

(a) presenting to the board of directors a verified petition stating that the person is the holder of title or evidence of title to membership land included in the corporation or district, particularly describing the land with a map or plat, that the person wishes to withdraw from the corporation or district; and

(b) tendering to the board the pro rata amount of liability of the person's land for all of the corporation's lawfully created and existing lien liabilities together with the person's pro rata amount of interest due and to become due upon any liabilities up to the maturity of the liabilities.

(2) If the matters and things set forth in the petition are true and the petitioner deposits with the board the petitioner's pro rata amount of the liabilities or furnishes a receipt for the amount from the mortgage holders or lienholders holding liens against the land, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of the land from the corporation or district and its liabilities.

(3) Upon presentation of the release to the mortgage holder or lienholder claiming a right against the membership land, the mortgage holder or lienholder shall furnish a release, which may be filed and recorded in any county or counties in which the land is located.

(4) The board of directors and corporate assets of the corporation must be responsible to any mortgage holder or lienholder and to the person withdrawing the land for the payment of funds on the debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323; amd. Sec. 1327, Ch. 56, L. 2009; amd. Sec. 23, Ch. 19, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 19 in (2) after "mortgage" inserted "holders"; in (4) after "mortgage" inserted "holder"; and made minor changes in style. Amendment effective October 1, 2011.

35-16-304. Withdrawal — application to court for order. If the board of directors refuses or fails for a period of 30 days to act upon a petition of withdrawal, the petitioner is entitled to apply to the district court in the county in which the land or the larger proportion of the land is situated for an order of withdrawal, and upon payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against the corporation or its membership land of the pro rata amount of the petitioner's land's liabilities, the petitioner is entitled to an order of withdrawal and release of the petitioner's land. The filing with the clerk and recorder of a duly certified copy of the order permitting withdrawal operates to release the membership land described in the order from any liens of the corporation under the provisions of this chapter.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324; amd. Sec. 1328, Ch. 56, L. 2009.

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions of this chapter, each member and each unit of membership in acres, production, or other evidence of membership is entitled to vote in person or by proxy. Corporate action at a meeting must be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or the bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any organization meeting or meeting of the stockholders or members. If any subdivision or subdistrict fails to elect a delegate, any individual member may give a proxy. However, a person who is not a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for at least 3 years immediately preceding the meeting is not entitled to act as proxy.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317; amd. Sec. 1329, Ch. 56, L. 2009.

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.

35-16-314. Qualifications of directors — quorum — vacancies. (1) A person is not eligible to be a director of any corporation or district organized under the provisions of this chapter unless the person is a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors is necessary for the transaction of business. However, if the bylaws or board of directors provide for an executive committee, a quorum of that committee may carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws provide otherwise, the vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314; amd. Sec. 1330, Ch. 56, L. 2009.

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.

Cross-References

Amendment of bylaws, 35-16-208.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.

History: En. Sec. 2, Ch. 93, L. 1921; re-en. Sec. 6427, R.C.M. 1921; re-en. Sec. 6427, R.C.M. 1935; R.C.M. 1947, 14-331.

Part 4
Corporate Indebtedness

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.

History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

Cross-References

Petition for incorporation, 35-16-202.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon

and authorizing, directing, and empowering the executive officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: **En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.**

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: **En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.**

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: **En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.**

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17
COOPERATIVE AGRICULTURAL MARKETING

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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.
Cooperative associations, Title 35, ch. 15.
Agricultural associations, Title 35, ch. 16.
Agricultural marketing and transportation, Title 80, ch. 11, part 1.
Wheat research and marketing, Title 80, ch. 11, part 2.
Livestock marketing, Title 81, ch. 8.

Part 1
General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" means a person who has been qualified and accepted for membership in an association.

(4) The term "person" includes individuals, firms, partnerships, corporations, and associations.

(5) Associations organized under this chapter must be considered nonprofit because they are not organized to make profits for themselves or for their members, but only for their members as producers.

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part); amd. Sec. 2, Ch. 130, L. 1999.

Cross-References

Nonprofit corporations generally, Title 35, ch. 2.

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: **En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.**

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: **En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.**

Cross-References

Articles to specify purpose, 35-17-202.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: **En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.**

Cross-References

Articles of incorporation to specify purpose, 35-17-202.

Who may be members, 35-17-301.

Assignment of agreement as security for loans, 35-17-408.

Part 2
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.
Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter shall prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the articles must set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member must be determined and fixed. The association has the power to admit new members who must be entitled to share in the property of the association with the old members, in accordance with the general rules;

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The articles must be subscribed by the incorporators and must be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies must be accepted as prima facie evidence of the facts contained in the articles and of the due incorporation of the association.

History: En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408; amd. Sec. 36, Ch. 174, L. 1983; amd. Sec. 5, Ch. 559, L. 1987; amd. Sec. 209, Ch. 368, L. 1991; amd. Sec. 3, Ch. 130, L. 1999.

Cross-References

Permissible purposes for organization, 35-17-105.
Directors, 35-17-311.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation must be approved by a majority of the directors and then adopted by vote of a majority of those members voting at any regular meeting of the association or at a special meeting called for the purpose of amending the articles, unless the articles require approval by a larger number of directors or members. A statement setting forth the amendment must be executed and attested to on behalf of the association by its appropriate officers. The statement must be filed in the office of the secretary of state who shall issue a certificate of amendment of the articles of incorporation. A certified copy of the certificate of amendment must be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: **En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409; amd. Sec. 37, Ch. 174, L. 1983; amd. Sec. 4, Ch. 130, L. 1999.**

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.
Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall prepare one original and one copy of a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: **En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420; amd. Sec. 157, Ch. 575, L. 1981; amd. Sec. 55, Ch. 131, L. 1983; amd. Sec. 38, Ch. 174, L. 1983.**

Cross-References

County filing fees for marketing agreements, 35-17-409.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized pursuant to this part shall pay to the secretary of state a fee for filing an amendment to the articles and a fee for receiving a certificate of amendment. The fees must be set and deposited in accordance with 2-15-405.

History: **En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422; amd. Sec. 27, Ch. 396, L. 2001.**

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.
Issuance of certificate of incorporation for agricultural associations, 35-16-204.
County filing fees for marketing agreements, 35-17-409.

35-17-206. Bylaws. (1) Each association incorporated under this chapter shall, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt the bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of those votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, the time of their election, and the mode and manner of giving notice of these matters;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the fees, and the purposes for which they may be used;

(h) the amount that each member or stockholder is required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to the stockholder or member and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock, the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock, the manner of assignment and transfer of the interest of members and the shares of common stock, and the conditions upon which and the time when membership of any member ceases;

(j) the automatic suspension of the rights of a member when the member ceases to be eligible for membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part); amd. Sec. 1331, Ch. 56, L. 2009.

Cross-References

Operation — members, directors, and officers, Title 35, ch. 17, part 3.

Part 3
Operation — Members, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.
Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.
Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.
Members and directors of agricultural associations, Title 35, ch. 16, part 3.
Bylaws, 35-17-206.
Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of the products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association is other than a natural person, that member may be represented by any individual, associate, officer, or member authorized in writing.

(3) One association organized under this chapter may become a member or stockholder of any other association or associations organized under this chapter.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407; amd. Sec. 5, Ch. 130, L. 1999.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid the member's membership fee in full, the member must receive a certificate of membership.

(2) (a) An association organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that stock without par value may not be issued.

(b) The articles may require that members own one or more shares of membership stock. The membership stock may be issued or transferred only to a person eligible to become a member and only when that person satisfies the other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

(3) An association may not issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but retention as security does not affect the members' right to vote.

(4) An association, in its bylaws, may limit the amount of common stock that one member may own.

(5) (a) Unless the articles provide otherwise, an association may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the association a prior right to acquire any stock offered for sale or the right to recall the stock of any stockholder, or both rights.

(b) The consideration paid by the association for recalled stock must be its par value and accrued unpaid dividends. However, if the book value of the stock is less than the par value, the consideration must be the book value.

(c) An association may set off obligations of a stockholder to the association.

(d) If the remaining assets of an association would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, the association may not acquire, recall, exchange, or redeem any stock for consideration other than stock or certificates of equity interest of equal or subordinate rank.

(6) (a) If stock is acquired, recalled, exchanged, or redeemed by an association, the stock is restored to the status of authorized but unissued stock.

(b) Stockholders do not have a preemptive right to purchase additional stock.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part); amd. Sec. 6, Ch. 130, L. 1999.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.
Shares of cooperative associations, Title 35, ch. 15, part 4.
Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.
Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

35-17-303. Limited liability of members. Except for debts lawfully contracted between a member and the association, a member is not liable for the debts of the association for an amount exceeding the sum remaining unpaid on the member's membership fee or subscription to the capital stock, including any unpaid balance on any promissory notes given in payment of the subscription.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part); amd. Sec. 1332, Ch. 56, L. 2009.

35-17-304. Expulsion of member. In case of the expulsion of a member, the board of directors shall equitably and conclusively appraise the member's property interests in the association and shall fix the amount of the interest in money, which must be paid to the member within 1 year after expulsion.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part); amd. Sec. 7, Ch. 130, L. 1999.

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: (1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association must be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members must be divided into districts and that the directors must be elected according to the districts. In that case, the bylaws must specify the number of directors to be elected by each district, the manner and method of reapportioning the directors, and the manner and method of redistricting the territory covered by the association. The bylaws may provide that primary elections must be held in each district to elect the directors apportioned to the districts, and the result of all primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) A director during the term of office may not be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of a term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provide for an election of directors by district. In that case, the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412; amd. Sec. 1333, Ch. 56, L. 2009.

35-17-312. Officers — election — bank as treasurer. (1) The directors shall elect from their number a president and one or more vice presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary, in which case it may not be considered an officer but instead a function of the board of directors, and the secretary shall perform the usual accounting duties of the treasurer, except that the funds must be deposited only as authorized by the board of directors.

(2) (a) If the bylaws provide, the directors may also elect from their number a presiding officer and one or more vice presiding officers, in which case the president and vice presidents need not be directors or stockholders.

(b) Any other officer may be chosen as provided in the bylaws.

History: En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413; amd. Sec. 8, Ch. 130, L. 1999.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal must be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom charges have been brought must be informed in writing of the charges previous to the meeting and must have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against the director or officer must have the same opportunity.

(2) If the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which the director was elected. The board of directors shall call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question is removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415; amd. Sec. 1334, Ch. 56, L. 2009.

35-17-314. Referendum to membership of matters passed by board. Upon demand of a majority of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for a decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416; amd. Sec. 9, Ch. 130, L. 1999.

35-17-315. Creation of capital reserve — distribution of net earnings. At least once annually, the directors shall determine and distribute net proceeds as follows:

(1) (a) An association organized under this chapter may set aside part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to the capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which must be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(b) A share of the net proceeds may be set aside for or paid to employees. This amount for all purposes, except the computation of net proceeds, must be considered an expense of the association.

(c) In an association with capital stock, a dividend may be paid on the capital stock as authorized in the articles. A dividend may not be paid if the association's capital is impaired or the payment of the dividend would result in an impairment of capital.

(2) Net earnings in excess of any deductions in subsection (1) must be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in the following or a combination of the following: cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430; amd. Sec. 10, Ch. 130, L. 1999.

Part 4
Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title to the products and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by the member or stockholder of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member or stockholder will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and these provisions are valid and enforceable in the courts of this state.

(3) In the event of any breach or threatened breach of a marketing contract by a member, the association is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance. Pending the adjudication of an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association is entitled to a temporary restraining order and preliminary injunction against the member or stockholder.

History: En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417; amd. Sec. 1335, Ch. 56, L. 2009.

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: **En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.**

Part 5
Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).**

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).**

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).**

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5); amd. Sec. 158, Ch. 575, L. 1981; amd. Sec. 39, Ch. 174, L. 1983.**

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations that are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations that are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment of title caused by the merger or consolidation.

(3) The right of any creditor may not be impaired by the merger or consolidation without the creditor's consent.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7); amd. Sec. 159, Ch. 575, L. 1981; amd. Sec. 1336, Ch. 56, L. 2009.

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).

CHAPTER 18
RURAL COOPERATIVE UTILITIES

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Chapter Cross-References

Power and energy companies, Title 69, ch. 5.

Part 1
General

35-18-101. Short title. This chapter may be cited as the "Rural Electric and Telephone Cooperative Act".

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.

35-18-102. Definitions. In this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high-grade voice communication, higher than 4 kilohertz.

(2) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether the means are owned or leased.

(3) "Cooperative" means a corporation organized under this chapter or a corporation that becomes subject to the provisions of this chapter.

(4) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership in a cooperative as provided by the articles of incorporation or bylaws of the cooperative, including persons admitted to joint membership.

(5) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or an agency of a state or political subdivision, or other organization or group of persons.

(6) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means:

(a) an area not included within the boundaries of an incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent to March 17, 1939;

(b) an incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971;

(c) a former rural area annexed by a municipality and subject to 69-5-109; or

(d) an incorporated municipality that was served by a public utility that sold the public utility's distribution facilities within that municipality to an electric cooperative after January 1, 1998.

History: (1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L. 1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979; amd. Sec. 1, Ch. 208, L. 1981; amd. Sec. 2, Ch. 168, L. 1987; amd. Sec. 2, Ch. 406, L. 2001.

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.

35-18-104. Exemption from jurisdiction of public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter are exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529; amd. Sec. 3, Ch. 406, L. 2001; amd. Sec. 1, Ch. 234, L. 2007.

Cross-References

Regulation of utilities, Title 69, ch. 3.

Utility lines and facilities provisions, Title 69, ch. 4.

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter:

(1) for the purpose of supplying electrical energy and promoting and extending the use of electrical energy in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of additional facilities as are required to ensure the availability of service to the widest practicable number of users of telephone service, cable television service, or broadband facilities; and

(3) for purposes allowable under federal authorization, including rural economic development activities.

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979; amd. Sec. 1, Ch. 254, L. 1985; amd. Sec. 3, Ch. 168, L. 1987; amd. Sec. 1, Ch. 61, L. 1993; amd. Sec. 41, Ch. 7, L. 2001.

35-18-106. Powers of cooperatives. (1) A cooperative may:

(a) sue and be sued in its corporate name;

(b) have perpetual existence;

(c) adopt a corporate seal and alter the seal;

(d) become a member in one or more other cooperatives or corporations or own stock in other cooperatives or corporations;

(e) construct, purchase, take, receive, lease as lessee, or otherwise acquire and own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber:

(i) electric transmission and distribution lines or systems;

(ii) electric generating plants;

(iii) electric refrigeration plants;

(iv) telephone lines, facilities, or systems (but not telegraph or radio broadcasting services or facilities) as defined by law;

(v) lands, buildings, structures, dams, plants and equipment, and all kinds or classes of real or personal property that may be considered necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(f) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(g) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness and secure the payment of indebtedness by mortgage, pledge, deed of trust, or any other encumbrance upon all of its then-owned or after-acquired real or personal property, assets, franchises, revenue, or income;

(h) subject to the requirements on the use of public thoroughfares and land that are imposed by the appropriate authority having jurisdiction over corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems, construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems:

(i) along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways; and

(ii) upon, under, and across all publicly owned lands;

(i) exercise the power of eminent domain in the manner provided in Title 70, chapter 30, for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(j) conduct its business and exercise all of its powers within or outside of this state;

(k) adopt, amend, and repeal bylaws; and

(l) perform all other acts and exercise all other powers that may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized or authorized under federal law.

(2) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(1) may:

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electrical energy;

(b) distribute, sell, supply, and dispose of electrical energy in rural areas to:

(i) its members;

(ii) governmental agencies and political subdivisions; and

(iii) other persons not in excess of 10% of the number of its members;

(c) make loans to persons to whom electrical energy is or will be supplied by the cooperative to assist those persons in wiring their premises and installing in their premises electrical and plumbing fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with electrical and plumbing fixtures, purchase, acquire, lease, sell, distribute, install, and repair the electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for electrical and plumbing fixtures; and

(e) make loans to persons to whom electrical energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist those persons in constructing, maintaining, and operating electric refrigeration plants.

(3) In addition to the powers listed in subsection (1), corporations organized under the provisions of 35-18-105(2) may:

(a) improve and expand existing telephone lines, facilities, and systems;

(b) construct, acquire, operate, and furnish additional telephone lines, facilities, and systems that are required to ensure the availability of adequate telephone service to the widest practicable number of users of telephone service;

(c) make loans to persons to whom telephone service is or will be supplied by the cooperative to assist those persons in wiring their premises for telephone service and installing in their premises telephone fixtures, appliances, apparatus, and equipment of all kinds and character;

(d) in connection with telephone fixtures, purchase, acquire, lease, sell, distribute, install, and repair the telephone fixtures, appliances, apparatus, and equipment; and

(e) accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and all types of security for telephone fixtures.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985; amd. Sec. 4, Ch. 168, L. 1987; amd. Sec. 2, Ch. 61, L. 1993; amd. Sec. 42, Ch. 7, L. 2001; amd. Sec. 31, Ch. 125, L. 2001.

Cross-References

Articles of incorporation, 35-18-203.
Bylaws, 35-18-207.
Disposition or encumbrance of property, 35-18-317.
Merger or consolidation, 35-18-403.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electrical energy in rural areas and owning and operating electric transmission or distribution lines in that state is permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) The foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event that any process is served upon the secretary of state, the secretary of state shall as soon as possible forward the process by certified mail to the corporation at the address of the corporation specified in the instrument.

(3) The corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in the courts.

(4) The corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenue and income to be derived from them.

History: En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526; amd. Sec. 43, Ch. 7, L. 2001.

Cross-References

Merger, consolidation, dissolution, and winding up, Title 35, ch. 18, part 4.

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.

Cross-References

Meetings of members, 35-18-303.

35-18-109. No area restriction — telephone cooperatives. A telephone cooperative, regardless of when it was organized pursuant to 35-18-105, is not restricted by population of area served or other criteria to any area of service.

History: En. Sec. 1, Ch. 168, L. 1987.

Part 2
Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.
Organization of professional service corporations, Title 35, ch. 4, part 2.
Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.
Formation of mining partnerships, Title 35, ch. 13, part 1.
Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.
Formation of agricultural associations, Title 35, ch. 16, part 2.
Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

35-18-201. Name. (1) The name of each cooperative shall include the words "electric" or "telephone" and "cooperative" and the abbreviation "Inc."; provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.
Exclusivity of corporate name, 30-13-202.
Business corporation — corporate name, Title 35, ch. 1, part 3.
Business trust name, 35-5-201.
Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.
Restrictions on limited partnership names, 35-12-505.

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.

Cross-References

Members, 35-18-301.
Incorporators' role in dissolution, 35-18-404.

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative must state in the caption that the articles of incorporation are executed pursuant to this chapter, must be signed by each of the incorporators, and must state:

(a) the name of the cooperative;
(b) the address of its principal office;
(c) the names and addresses of the incorporators;
(d) the names and addresses of the persons who constitute its first board of trustees; and
(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions not inconsistent with law regarding liability as provided in 35-1-216; and
(b) provisions for classification of members in a cooperative.

(3) A cooperative's articles of incorporation must be submitted to the secretary of state for filing as provided in this chapter.

(4) It is not necessary to include in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506; amd. Sec. 40, Ch. 174, L. 1983; amd. Sec. 6, Ch. 559, L. 1987; amd. Sec. 211, Ch. 368, L. 1991; amd. Sec. 4, Ch. 406, L. 2001.

Cross-References

Effect of merger or consolidation, 35-18-403.
Filings and fees, Title 35, ch. 18, part 5.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as

the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a); amd. Sec. 41, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-501.

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b); amd. Sec. 42, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-18-502.

35-18-206. Existing corporations — reorganization under chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electrical energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of the corporation into a cooperative under this chapter and proposed articles of conversion to give effect to the conversion must be first approved by the board of trustees or the board of directors, as the case may be, of the corporation. The proposed articles of conversion must recite in the caption that they are executed pursuant to this chapter and must state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of the corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which the corporation was organized;

(e) the name assumed by the corporation;

(f) a statement that the corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of the corporation into memberships in the corporation after completion of the conversion; and

(h) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of the corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of the corporation must then be submitted to a vote of the members or stockholders, as the case may be, of the corporation at any duly held annual or special meeting of the corporation, the notice of which must set forth full particulars concerning the proposed conversion. The proposition for the conversion of the corporation into a cooperative under this chapter and the proposed articles of conversion, with any amendments to the articles of conversion that the members or stockholders of the corporation choose to make, is considered to be approved upon the affirmative vote of not less than two-thirds of those members of the corporation voting on the articles of conversion at the meeting or, if the corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of the corporation represented at the meeting.

(3) Upon approval by the members or stockholders of the corporation, articles of conversion in the form approved by the members or stockholders of the corporation must be executed on behalf of the corporation by its president or vice president and its corporate seal must be affixed to the articles of conversion and attested by its secretary or assistant secretary. The president or vice president executing the articles of conversion on behalf of the corporation shall also make and annex to the articles of conversion an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of the corporation into a cooperative under this chapter and the articles of conversion were complied with.

(4) The articles of conversion and affidavit must be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter includes the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516; amd. Sec. 43, Ch. 174, L. 1983; amd. Sec. 5, Ch. 168, L. 1987; amd. Sec. 44, Ch. 7, L. 2001.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.
Shares of cooperative associations, Title 35, ch. 15, part 4.
Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.
Stock of cooperative agricultural marketing associations, 35-17-302.
Filing and fees for articles of conversion, 35-18-501, 35-18-502.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.

Part 3
Operation — Members, Trustees, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.
Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.
Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.
Members and directors of agricultural associations, Title 35, ch. 16, part 3.
Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

35-18-301. Members. (1) A person who is not an incorporator may not become a member of a cooperative unless that person agrees to use electrical energy, electrical energy delivery services, or telephone service as provided by the cooperative's bylaws.

(2) Membership in the cooperative is not transferable, except as provided in the bylaws. The articles of incorporation or the bylaws may allow joint membership and may prescribe additional qualifications, limitations, rights, and obligations in respect to any membership and membership class, including but not limited to the number of trustees that each class or membership or class or classes of membership within a voting district under 35-18-313 are entitled to elect.

(3) The articles of incorporation or the bylaws of a cooperative may provide for classifications of members in a cooperative.

(4) Members or a class or classes of members may designate voting delegates, as provided by 35-18-313 and the cooperative's bylaws, and may vote through their designated voting delegates. The bylaws may provide that each classification of members may designate a different number and method for selecting and governing voting delegates.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a); amd. Sec. 45, Ch. 7, L. 2001; amd. Sec. 5, Ch. 406, L. 2001.**

35-18-302. Nonliability of members, trustees, and officers for debts of cooperative. (1) The private property of the members of a cooperative is exempt from execution for the debts of the cooperative, and a member is not liable or responsible for any debts or obligations of the cooperative.

(2) A trustee or officer of a cooperative or acting for a cooperative is not personally liable to the cooperative or its members for any actions taken or a failure to take action as a trustee or officer unless:

(a) the trustee or officer fails to perform the trustee's or officer's responsibilities, including those provided in 35-18-325 and 35-18-326; and

(b) the failure to perform constitutes willful misconduct or recklessness.

History: **En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522; amd. Sec. 10, Ch. 173, L. 2001.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Effect of merger or consolidation on liabilities, 35-18-403.

Liabilities under dissolution and winding up of cooperatives, 35-18-404, 35-18-405.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at such place as shall be determined by the board of trustees.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g); amd. Sec. 1, Ch. 131, L. 1981.**

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such

proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: **En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.**

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative must be managed by a board of not less than five trustees, each of whom must be a member of the cooperative or of another cooperative that is a member of the cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to cooperative employees; and

(b) except in emergencies, may not be employed by the cooperative in any capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the cooperative at any meeting or on any business whenever representation has been approved by the board.

(4) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

(5) The policies of the cooperative may provide that benefits provided to employees may be extended to trustees.

History: **En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d); amd. Sec. 1, Ch. 237, L. 1981; amd. Sec. 1, Ch. 41, L. 1993.**

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion hold office until the next annual meeting of the members or until their successors have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee holds office for the term for which the trustee is elected or until a successor is elected and qualified.

(2) A majority of the board of trustees constitutes a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except powers that are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: **En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e); amd. Sec. 1337, Ch. 56, L. 2009.**

35-18-313. Voting districts. (1) (a) For corporations organized under the provisions of 35-18-105(2), notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies telephone service to members must be divided into two or more voting districts and that in respect to each voting district:

(i) the members residing in the voting district shall elect a designated number of trustees;

(ii) the members residing in the voting district shall elect a designated number of delegates; or

(iii) the members shall elect both trustees and delegates.

(b) The bylaws must prescribe the manner in which the voting districts and the members of those voting districts and the delegates and trustees, if any, elected from those voting districts are to function and the powers of the delegates, which may include the power to elect trustees.

(c) A member present at any voting district meeting and a delegate present at any meeting may not vote by proxy or by mail.

(2) (a) For corporations organized under the provisions of 35-18-105(1), notwithstanding any other provisions of this chapter, the bylaws may provide that the territory or geographic area in which a cooperative operates to serve members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(i) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(ii) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(iii) the members or the members of a membership class or classes shall elect both trustees and delegates.

(b) This section does not restrict or prohibit a cooperative from using any combination of voting districts based on members or classes of members within a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of service or product provided by the cooperative.

(c) The bylaws must prescribe the manner in which the voting districts and the trustees and delegates, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a cooperative.

(d) A member present at any voting district meeting and a delegate present at any meeting may not vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510; amd. Sec. 46, Ch. 7, L. 2001; amd. Sec. 6, Ch. 406, L. 2001.

35-18-314. Officers. The officers of a cooperative consist of a president, vice president, secretary, and treasurer who must be elected annually by and from the board of trustees. A person may not continue to hold any office after the person ceases to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint other officers, agents, or employees that it considers necessary or advisable and shall prescribe the powers and duties of those offices. Any officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

History: En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511; amd. Sec. 1338, Ch. 56, L. 2009.

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.

35-18-316. Refunds to members — retention of unclaimed refunds. (1) Revenue of a cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in the fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year; and

(f) provide a fund, which may be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electrical energy and other services made available by the cooperative.

(2) Nothing contained in this section may be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes.

History: **En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520; amd. Sec. 1, Ch. 263, L. 1993; amd. Sec. 47, Ch. 7, L. 2001.**

Cross-References

Distributions to members under dissolution and winding up proceedings, 35-18-405.

35-18-317. Disposition or encumbrance of property. (1) Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting.

(2) The board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of such property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives.

History: **En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521; amd. Sec. 1, Ch. 289, L. 1987.**

Cross-References

Powers of rural cooperative utilities, 35-18-106.

Disposition of property under merger, consolidation, and dissolution, Title 35, ch. 18, part 4.

35-18-318. Long-term indebtedness — membership approval. Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

History: **En. Sec. 1, Ch. 206, L. 1983.**

35-18-319 through 35-18-324 reserved.

35-18-325. Duties of trustees and officers. (1) A trustee or officer shall discharge the duties of the office, including the trustee's or officer's duties as a member of any committee:

(a) in good faith;

(b) with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances; and

(c) in a manner that the trustee or officer reasonably believes to be in the best interest of the cooperative.

(2) In discharging duties, a trustee or officer is entitled to rely on factual information, opinions, reports, or statements, including but not limited to financial statements and other financial information, if prepared and presented by:

(a) one or more officers or employees of the cooperative whom the trustee or officer reasonably believes to be reliable and competent in the subject matter presented;

(b) attorneys, public accountants, engineers, or other persons with regard to subject matters that the trustee or officer reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of trustees or officers of which the trustee or officer is not a member if the trustee or officer reasonably believes that the committee merits confidence.

(3) A trustee or officer is not acting in good faith if the trustee or officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) A trustee or officer is not liable for any action taken as a trustee or officer or for any failure to take any action if the trustee or officer performs the duties of the office in compliance with this section.

History: En. Sec. 1, Ch. 173, L. 2001.

35-18-326. Trustee or officer conflict of interest. (1) A conflict of interest transaction is a transaction with the cooperative in which a trustee of the cooperative has a direct or indirect interest. A conflict of interest transaction is not voidable and may not be the basis for imposing liability on the trustee or officer if the transaction was fair at the time the transaction was entered into.

(2) If a trustee or officer has a conflict of interest relating to a transaction, the trustee or officer:

(a) shall disclose to the trustees or members voting on the transaction the existence and nature of the conflict of interest and all facts known to the trustee with respect to the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction; and

(b) may not participate, directly or indirectly, in the vote on the transaction.

(3) For the purposes of this section, a trustee or officer of a cooperative has an indirect interest in a transaction if:

(a) another entity in which the trustee or officer has a material interest or in which the trustee or officer is a general partner is a party to the transaction; or

(b) another entity, other than a cooperative or corporation of which the cooperative is a member or shareholder, of which the trustee or officer is a director, officer, or trustee is a party to the transaction.

(4) (a) Except as provided in subsection (4)(b), a conflict of interest transaction is authorized, approved, or ratified if the transaction receives the affirmative vote of a majority of the trustees or officers on the board or committee who do not have a direct or indirect interest in the transaction.

(b) A transaction may not be authorized, approved, or ratified by a single trustee or officer.

(c) If a majority of the trustees or officers on the board or committee who do not have a direct or indirect conflict of interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action on the transaction.

(d) The presence of or vote cast by a trustee with a direct or indirect interest in the transaction does not affect the validity of any action taken under this section if the transaction is authorized, approved, or ratified as provided in this section.

(5) The articles or bylaws of the cooperative may impose additional requirements on conflict of interest transactions.

History: En. Sec. 2, Ch. 173, L. 2001.

35-18-327. Definitions. As used in 35-18-327 through 35-18-333, the following definitions apply:

(1) "Liability" means the obligation to pay a judgment, settlement, penalty, or fine, including an excise tax assessed with respect to an employee benefit plan, or to pay reasonable expenses incurred with respect to a proceeding.

(2) (a) "Official capacity" means the office of trustee or officer in a cooperative.

(b) The term does not include service for any other domestic cooperative or any partnership, joint venture, trust, or other enterprise.

(3) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(4) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

(5) (a) "Trustee or officer" means an individual who is or was a trustee or officer of a cooperative or an individual who, while a trustee or officer of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, employee, or agent of another domestic cooperative, partnership, joint venture, trust, or other enterprise.

(b) The term includes, unless the context requires otherwise, the estate or personal representative of a trustee or officer.

History: En. Sec. 3, Ch. 173, L. 2001.

35-18-328. Authority to indemnify. (1) Except as provided in subsection (4), an individual who is made a party to a proceeding because the individual is or was a trustee or officer may be indemnified against liability incurred in the proceeding if:

(a) the individual conducted business in good faith;

(b) the individual reasonably believed:

(i) in the case of conduct in the individual's official capacity with the cooperative, that the individual's conduct was in the cooperative's best interests; and

(ii) in all other cases, that the individual's conduct was at least not opposed to the cooperative's best interests; and

(c) in the case of any criminal proceeding, the individual had no reasonable cause to believe that the conduct was unlawful.

(2) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, a determination that the trustee or officer did not meet the standard of conduct described in this section.

(3) A cooperative may not indemnify a trustee or officer under this section:

(a) in connection with a proceeding by or in the right of the cooperative in which the trustee or officer was adjudged liable to the cooperative; or

(b) in connection with any other proceeding charging improper personal benefit to the trustee or officer, whether or not involving action in the trustee's or officer's official capacity, in which the trustee or officer was adjudged liable on the basis that personal benefit was improperly received by the trustee or officer.

(4) Indemnification permitted under this section in connection with a proceeding by or in the right of the cooperative is limited to reasonable expenses incurred in connection with the proceeding.

History: En. Sec. 4, Ch. 173, L. 2001.

35-18-329. Mandatory indemnification. Unless limited by its articles of incorporation, a cooperative shall indemnify a trustee or officer who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the trustee or officer was a party because the trustee or officer is or was a trustee or officer of the cooperative against reasonable expenses incurred by the trustee or officer in connection with the proceeding.

History: En. Sec. 5, Ch. 173, L. 2001.

35-18-330. Court-ordered indemnification. Unless a cooperative's articles of incorporation provide otherwise, a trustee or officer of the cooperative who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that the court considers necessary, may order indemnification if it determines that the trustee or officer:

(1) is entitled to mandatory indemnification under 35-18-329, in which case the court shall also order the cooperative to pay the trustee's reasonable expenses incurred in obtaining court-ordered indemnification; or

(2) is fairly and reasonably entitled to indemnification in view of all the relevant circumstances. If the trustee or officer was adjudged liable as described in 35-18-328(3), the trustee's or officer's indemnification is limited to reasonable expenses incurred.

History: En. Sec. 6, Ch. 173, L. 2001.

35-18-331. Determination and authorization of indemnification. (1) A cooperative may not indemnify a trustee or officer under 35-18-328 unless authorized in the specific case after a determination has been made that indemnification of the trustee or officer is permissible in the circumstances because the trustee or officer has met the standard of conduct set forth in 35-18-328.

(2) The determination must be made:

(a) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subsection (2)(a), by majority vote of a committee designated by the board of directors, in which designated directors who are parties may participate;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subsection (2)(a) or (2)(b); or

(ii) if a quorum of the board of directors cannot be obtained under subsection (2)(a) and a committee cannot be designated under subsection (2)(b), selected by majority vote of the full board of directors in which selected directors who are parties may participate; or

(d) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses must be made by those entitled under subsection (2)(c) to select counsel.

History: En. Sec. 7, Ch. 173, L. 2001.

35-18-332. Insurance. A cooperative may purchase and maintain insurance on behalf of an individual who is or was a director, trustee, officer, employee, or agent of the cooperative or who, while a director, trustee, officer, employee, or agent of the cooperative, is or was serving at the request of the cooperative as a director, trustee, officer, partner, employee, or agent of another domestic cooperative, partnership, joint venture, trust, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from an individual's status as a director, trustee, officer, employee, or agent, whether or not the cooperative would have power to indemnify the individual against the same liability under 35-18-328 or 35-18-329.

History: En. Sec. 8, Ch. 173, L. 2001.

35-18-333. Application. (1) A provision treating a cooperative's indemnification of trustees or officers that is contained in its articles of incorporation, its bylaws, a resolution of its shareholders or board of directors, a contract, or other instrument is valid only if and to the extent that the provision is consistent with 35-18-327 through 35-18-333. If articles of incorporation limit indemnification, indemnification is valid only to the extent that it is consistent with the articles of incorporation.

(2) Sections 35-18-327 through 35-18-333 do not limit a cooperative's power to pay or reimburse expenses incurred by a trustee or officer in connection with the trustee's or officer's

appearance as a witness in a proceeding at a time when the trustee or officer has not been made a named defendant or respondent to the proceeding.

History: En. Sec. 9, Ch. 173, L. 2001.

Part 4
Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514; amd. Sec. 44, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513; amd. Sec. 45, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a); amd. Sec. 46, Ch. 174, L. 1983.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Filings and fees, 35-18-501, 35-18-502.

35-18-405. Dissolution and winding up of cooperative that has commenced business. A cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and then the proposition that the cooperative be dissolved must be submitted to the members of the cooperative at any annual or special meeting, the notice of which must set forth the proposition. The proposed voluntary dissolution must be considered to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon approval, a certificate of election to dissolve, designated the "certificate", must be executed on behalf of the cooperative by its president or vice president and its corporate seal must be affixed to the certificate and attested by its secretary or assistant secretary. The certificate must state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice president executing the certificate shall also make and attach to the certificate an affidavit stating that the provisions of this subsection were complied with. The certificate and affidavit must be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative must cease to carry on its business except to the extent necessary for the winding up of the cooperative, but its corporate existence continues until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees has full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each

member during the 7 years preceding the date of filing of the certificate or, if the cooperative has not been in existence for 7 years, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision has been made for payment or discharge and all of the remaining property and assets of the cooperative have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which must be executed on behalf of the cooperative by its president or vice president and its corporate seal must be affixed to the articles and attested by its secretary. The articles of dissolution must recite in the caption that they are executed pursuant to this chapter and must state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has previously delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of that office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made for payment or discharge;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice president executing the articles of dissolution shall also make and attach to the articles an affidavit stating that the provisions of this subsection (6) were complied with. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection (6), must be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b); amd. Sec. 47, Ch. 174, L. 1983; amd. Sec. 2, Ch. 289, L. 1987; amd. Sec. 1339, Ch. 56, L. 2009.**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.
Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.
Involuntary corporate dissolution, Title 35, ch. 6.
Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.
Dissolution of limited partnerships, Title 35, ch. 12, part 12.
Sale or disposition of assets of cooperative associations, 35-15-506.
Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.
Filings and fees, 35-18-501, 35-18-502.

Part 5
Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, or dissolution, when executed and accompanied by affidavits that may be required by applicable provisions of this chapter, must be presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of this chapter, the secretary of state shall upon the payment of the fees as provided in this chapter file the articles, and upon filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution is in effect.

(2) The secretary of state, immediately upon the filing of any articles pursuant to this chapter, shall transmit a certified copy to the county clerk of the county in which the principal office of each cooperative or corporation affected by the incorporation, amendment, consolidation, merger, conversion, or dissolution is located. The clerk of any county, upon receipt of any certified copy, shall file and index the copy in the records of that office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: **En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519; amd. Sec. 48, Ch. 174, L. 1983; amd. Sec. 1340, Ch. 56, L. 2009.**

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204.

35-18-502. Fees to be charged by secretary of state. (1) The secretary of state shall charge and collect a fee for each of the following:

(a) filing articles of incorporation and issuing a certificate of incorporation;

(b) filing articles of amendment and issuing a certificate of amendment;

(c) filing articles of consolidation or merger and issuing a certificate of consolidation or merger;

(d) filing articles of conversion and issuing a certificate of conversion;

(e) filing a certificate of election to dissolve and issuing a certificate of election to dissolve;

(f) filing articles of dissolution and issuing a certificate of dissolution; and

(g) filing a certificate of change of principal office and issuing a certificate of change of principal office.

(2) Fees pursuant to this section must be set and deposited in accordance with 2-15-405.

History: En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527; amd. Sec. 28, Ch. 396, L. 2001.

35-18-503. Exemption from taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter, except as provided in 10-4-201 and 15-53-138, are exempt from all excise and income taxes.

History: En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528; amd. Sec. 19, Ch. 635, L. 1985; amd. Sec. 7, Ch. 676, L. 1991; amd. Sec. 2, Ch. 65, L. 1997; amd. Sec. 38, Ch. 426, L. 1999.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Exempt securities, 30-10-104.

35-18-504. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 11, Ch. 676, L. 1991.

35-18-505. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 16, Ch. 676, L. 1991.

35-18-506. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 17, Ch. 676, L. 1991.

35-18-507 through 35-18-509 reserved.

35-18-510. Repealed. Sec. 3, Ch. 65, L. 1997.

History: En. Sec. 15, Ch. 676, L. 1991.

CHAPTER 19
ELECTRICITY BUYING COOPERATIVE ACT
(Repealed)

Part 1 — General Provisions (Repealed)

Part 2 — Powers and Restrictions—Buying Cooperatives (Repealed)

Part 3 — Incorporation and Dissolution (Repealed)

Chapter Compiler's Comments

Saving Clause: Section 3, Ch. 67, L. 2011, was a saving clause.

Transition: Section 4, Ch. 67, L. 2001, provided: "(1) Except as provided in subsection (2), an electricity buying cooperative in existence on [the effective date of this section] shall dissolve and wind up its affairs in accordance with 35-19-311 through 35-19-315.

(2) (a) An electricity buying cooperative shall honor terms and conditions of contracts executed on or before [the effective date of this section].

(b) Upon expiration of those contracts, an electricity buying cooperative shall dissolve and wind up its affairs within 1 year of the contract's expiration." Effective March 25, 2011.

Part 1
General Provisions
(Repealed)

35-19-101. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 1, Ch. 575, L. 1999.

35-19-102. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 2, Ch. 575, L. 1999; amd. Sec. 3, Ch. 491, L. 2007.

35-19-103. Repealed. Sec. 20, Ch. 565, L. 2003.
History: En. Sec. 3, Ch. 575, L. 1999; rep. Sec. 30, Ch. 577, L. 2001 (repealer voided by I.R. No. 117, Nov. 5, 2002).

35-19-104. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 4, Ch. 575, L. 1999; amd. Sec. 7, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 20, Ch. 591, L. 2001; amd. Sec. 4, Ch. 565, L. 2003.

35-19-105. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 8, Ch. 575, L. 1999.

35-19-106. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 9, Ch. 575, L. 1999.

35-19-107. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 14, Ch. 575, L. 1999.

35-19-108. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 28, Ch. 575, L. 1999.

Part 2
Powers and Restrictions — Buying Cooperatives
(Repealed)

35-19-201. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 5, Ch. 575, L. 1999.

35-19-202. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 6, Ch. 575, L. 1999.

35-19-203. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 7, Ch. 575, L. 1999.

35-19-204. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 15, Ch. 575, L. 1999.

35-19-205. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 22, Ch. 575, L. 1999.

Part 3
Incorporation and Dissolution
(Repealed)

35-19-301. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 10, Ch. 575, L. 1999.

35-19-302. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 11, Ch. 575, L. 1999.

35-19-303. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 12, Ch. 575, L. 1999.

35-19-304. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 13, Ch. 575, L. 1999.

35-19-305. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 16, Ch. 575, L. 1999.

35-19-306. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 17, Ch. 575, L. 1999.

35-19-307. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 18, Ch. 575, L. 1999.

35-19-308. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 19, Ch. 575, L. 1999.

35-19-309. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 20, Ch. 575, L. 1999.

35-19-310. Repealed. Sec. 2(1), Ch. 67, L. 2011.
History: En. Sec. 21, Ch. 575, L. 1999.

35-19-311. Repealed. Sec. 2(2), Ch. 67, L. 2011.
History: En. Sec. 23, Ch. 575, L. 1999; amd. Sec. 1, Ch. 67, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 67 in (1) near beginning after "must" deleted "unless otherwise determined by a vote of the members" and deleted former (1)(c) that read: "(c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees"; in (3) substituted "If a buying cooperative possesses redeemed patronage refunds, those funds must be distributed to members by December 31, 2011" for "A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must be used for educational purposes"; and made minor changes in style. Amendment effective March 25, 2011.

Contingent Effective Date — Repealer: Section 5(2), Ch. 67, L. 2011, provided that the repeal of this section is effective on the date that the Secretary of State notifies the Code Commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed. On April 5, 2011, the Secretary of State certified that there are no longer any articles of incorporation for electric buying cooperatives on file.

Pursuant to section 5(2), Ch. 67, L. 2011, this section was repealed effective April 5, 2011.

35-19-312. Repealed. Sec. 2(2), Ch. 67, L. 2011.
History: En. Sec. 24, Ch. 575, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 5(2), Ch. 67, L. 2011, provided that the repeal of this section is effective on the date that the Secretary of State notifies the Code Commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed. On April 5, 2011, the Secretary of State certified that there are no longer any articles of incorporation for electric buying cooperatives on file.

Pursuant to section 5(2), Ch. 67, L. 2011, this section was repealed effective April 5, 2011.

35-19-313. Repealed. Sec. 2(2), Ch. 67, L. 2011.
History: En. Sec. 25, Ch. 575, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 5(2), Ch. 67, L. 2011, provided that the repeal of this section is effective on the date that the Secretary of State notifies the Code Commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed. On April 5, 2011, the Secretary of State certified that there are no longer any articles of incorporation for electric buying cooperatives on file.

Pursuant to section 5(2), Ch. 67, L. 2011, this section was repealed effective April 5, 2011.

35-19-314. Repealed. Sec. 2(2), Ch. 67, L. 2011.
History: En. Sec. 26, Ch. 575, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 5(2), Ch. 67, L. 2011, provided that the repeal of this section is effective on the date that the Secretary of State notifies the Code Commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed. On April 5, 2011, the Secretary of State certified that there are no longer any articles of incorporation for electric buying cooperatives on file.

Pursuant to section 5(2), Ch. 67, L. 2011, this section was repealed effective April 5, 2011.

35-19-315. Repealed. Sec. 2(2), Ch. 67, L. 2011.
History: En. Sec. 27, Ch. 575, L. 1999.

Compiler's Comments

Contingent Effective Date: Section 5(2), Ch. 67, L. 2011, provided that the repeal of this section is effective on the date that the Secretary of State notifies the Code Commissioner that there are no longer any articles of incorporation for electric buying cooperatives on file or that the articles of dissolution for the last electric buying cooperative have been filed. On April 5, 2011, the Secretary of State certified that there are no longer any articles of incorporation for electric buying cooperatives on file.

Pursuant to section 5(2), Ch. 67, L. 2011, this section was repealed effective April 5, 2011.

CHAPTER 20
CEMETERY ASSOCIATIONS

Part 1 — Formation

35-20-101. Permissible purposes for association — first meeting — election of trustees.
35-20-102. Classification of trustees — staggered terms.
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35-20-203. Vacancies in membership.
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35-20-208. Trustees to manage — quorum — officers — bond of treasurer.
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35-20-214. Use of proceeds from sale of lots.
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35-20-216. Inalienability of lots.
35-20-217. Exemption from taxation and execution — no road construction through cemetery.

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35-20-302. Trustees of fund — appointment by district court — qualifications — powers.
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35-20-305. Vacancies — how filled.
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35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting.
35-20-308. Recording appointments of trustees.
35-20-309. Secretary of board.
35-20-310. Transfer of moneys received by association to trustees of fund.
35-20-311. Principal of fund to be reserved — income to be turned over to treasurer.
35-20-312. Use of income of fund.
35-20-313. Investment of fund.
35-20-314. Compensation of trustees of fund.
35-20-315. Annual report of trustees of fund.

Chapter Cross-References

Morticians and funeral directors, Title 37, ch. 19.
Health and safety — death, Title 50, ch. 15, part 4.
Estates, Trusts, and Fiduciary Relationships, Title 72.

Part 1
Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.
Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.
Formation of religious corporations sole, Title 35, ch. 3, part 2.

35-20-101. Permissible purposes for association — first meeting — election of trustees. A group of seven persons or more residing in any county in the state of Montana who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead may meet at a time and place that they or a majority of them agree upon and appoint a presiding officer and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association must be known and by determining upon the number of trustees to manage the affairs of the association. The number of trustees may not be less than three or more than nine. Upon determining the number of trustees they may proceed to elect the trustees by ballot.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101; amd. Sec. 1341, Ch. 56, L. 2009.

35-20-102. Classification of trustees — staggered terms. The presiding officer and secretary of the meeting described in 35-20-101 shall immediately after the election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year, those in the second class for 2 years, and those in the third class for 3 years. However, the trustees of each class may be reelected if they possess the qualifications mentioned in this part. The meeting must also determine on what day in each year the future annual election of trustees will be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102; amd. Sec. 1342, Ch. 56, L. 2009.

35-20-103. Document of incorporation — contents — filing. (1) The presiding officer and secretary of the meeting described in 35-20-101 shall within 5 days after the holding of the meeting make a written certificate, which must state:

(a) the names of the associates who attended the meeting;

(b) the corporate name of the association determined by a majority of the persons who met;

(c) the number of persons agreed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year identified for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216(2)(d).

(3) The certificate must be signed by the presiding officer and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause the acknowledged certificate to be recorded in the office of the county clerk and recorder of the county in which the meeting was held, and a certified copy of the recorded certificate must be filed with the secretary of state of the state of Montana, who shall issue a certificate of filing without charge.

History: En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103; amd. Sec. 7, Ch. 559, L. 1987; amd. Sec. 212, Ch. 368, L. 1991; amd. Sec. 1343, Ch. 56, L. 2009.

35-20-104. Effect of filing — powers of association — eminent domain. When a certificate of incorporation is acknowledged, recorded, and filed as provided in 35-20-103, the association is considered legally incorporated and has the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually. The association may also take private property for public use for a cemetery or place of burial of the dead. The power of eminent domain must be exercised under the provisions of Title 70, chapter 30.

History: En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104; amd. Sec. 32, Ch. 125, L. 2001.

Part 2
Operations Generally — Trustees of Association

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.
Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.
Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.

Cross-References

Estates, Title 72.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association must be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice president, secretary, and treasurer who shall hold their offices at the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of that office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107; amd. Sec. 1344, Ch. 56, L. 2009.

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which the secretary shall enter as correctly and carefully as may be the name, age, sex, place of birth, and cause of death with date of burial of every person interred in the cemetery. The secretary shall procure these facts from friends or relatives of the deceased or the undertaker that gives the order for interment at that time or, if the deceased is a pauper, a stranger, or criminal, from the coroner, physician, or other public officer directing the burial of the deceased.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108; amd. Sec. 1345, Ch. 56, L. 2009.

Cross-References

Secretarial recording of appointments, 35-20-308.

Secretary of association as secretary of trustee or board of trustees, 35-20-309.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.

Cross-References

Duties of secretaries, 35-20-308, 35-20-309.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.

Cross-References

Fund required, 35-20-301.

Use of fund income, 35-20-312.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-216. Inalienability of lots. (1) Whenever the land of an association is laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a transferred lot, that lot from the time of interment is inalienable and must, upon the death of the proprietor, descend to to the proprietor's heirs. However, any one or more of those heirs may release to any other of the heirs that individual's or their interest in the lot. A copy of the release must be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of that person's death;

(b) a relative of some person having an interest;

(c) the wife or husband of a person having an interest; or

(d) a relative of the husband or wife.

(2) However, the person or persons in whom the title to the lot or lots or part of the lot or lots is vested may at any time sell, convey, and release the lot or lots or parts of the lot or lots to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of conveyance must be filed in the same manner provided for release from one heir to another. The cemetery association may use any funds under its control for filing purposes and holds and may convey the lot or lots or parts of the lot or lots to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This subsection does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119; amd. Sec. 1346, Ch. 56, L. 2009.

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.

Cross-References

Tax-exempt property, Title 15, ch. 6, part 2.

Part 3
Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever at least $100 has been received by a cemetery corporation or association, either from the sale of lots or from direct payments of the corporation or association toward a fund by lot owners or otherwise, the trustees of that association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which the trust fund exists for the appointment of a trustee or of a board of trustees of the fund. The judge shall appoint a trustee or a board of trustees from a list submitted by the trustees of the association. The trust fund trustee or board must consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of the association.

(2) The trustee or the members of the board of trustees of the trust funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of the trust. Upon the election, appointment, and qualification of the trustees of the fund, all of the title to the funds included in the trust and all of the rights, powers, authorities, franchises, and trusts relating to the trust vest in the trustee or board. However, if any of those chosen and appointed as trustees fail to qualify within 30 days after their appointment, the rights, powers, authorities, franchises, and trusts vest in those who qualify. If any of those chosen and appointed fail to qualify within 30 days, a vacancy exists and the judge of the district court shall appoint a trustee to fill the vacancy from a list submitted by the trustees of the association.

(3) The board of trustees of the association may nominate any bank that is authorized to act as a trust company in Montana under state or federal law to be trustee of the trust fund. In that case, the district court shall appoint the nominee that shall serve without bond but is required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121; amd. Sec. 1347, Ch. 56, L. 2009.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).
Trust administration, Title 72, ch. 34.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to the trust or to trusteeship, each person chosen to be a trustee of the fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving the bond, with good and sufficient sureties, who shall justify in the aggregate in at least double the amount of the bond. The bond must be conditioned for the due and faithful performance of the trustee's trust until July 1 of the next even-numbered year after the year in which the bond is given and until the trustee gives a new bond.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount to be determined by the same rule, and with sureties as provided in subsection (1).

(3) Any failure to renew bonds within 30 days after the time provided is a sufficient ground for removal of any trustee within the discretion of the district court. The bonds must all be approved by a judge of the district court for the judicial district in which the cemetery for the trust exists or some part of the cemetery is located and must be filed with the clerk of the district court of the county in which the cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities that the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as provided in subsection (5).

(5) The trustee or trustees of the fund may deposit money, bonds, and securities as the trustee or trustees see fit with the county treasurer of the county in which the cemetery or some part of the cemetery is located for safekeeping, and it is the duty of the county treasurer to receive and safely keep all money, bonds, and securities and pay them out or deliver them, or any part of them, upon the order of the trustee or a majority of the trustees, when countersigned by a judge of the judicial district, and to keep an account with the trustee or trustees of all transactions. For the safekeeping and payment and delivery of all money, bonds, and securities, the treasurer and the treasurer's sureties are liable upon the treasurer's official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123; amd. Sec. 1348, Ch. 56, L. 2009.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

Cross-References

Trust administration, Title 72, ch. 34.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received therefor to be transferred under the provisions of this chapter to the permanent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.

CHAPTER 21
MAUSOLEUM AND COLUMBARIUM AUTHORITIES

Part 1 — General
(Repealed)

Part 2 — Organization and Regulation of Business
(Repealed)

Part 3 — Disposition and Removal of Remains
(Repealed)

Part 4 — Dedication of Property—Property Rights in Plots
(Repealed)

Part 5 — Records
(Repealed)

Part 6 — Endowment Care and Trust Funds
(Repealed)

Part 7 — Desecration and Vandalism Regulation of Construction
(Repealed)

Part 8 — Mausoleum-Columbarium Authorities

35-21-801. Short title.
35-21-802. Definitions.
35-21-803. Exemptions and limitations on applicability.
35-21-804. Incorporation required to transact business.
35-21-805. General powers.
35-21-806 through 35-21-809 reserved.
35-21-810. Disposition of remains — liability.
35-21-811. Limitations on actions — exemptions from liability.
35-21-812. Removal of remains — when removal excepted.
35-21-813 through 35-21-819 reserved.
35-21-820. Map or plat — filing — tax exemption.
35-21-821. Effect of dedication.
35-21-822. Removal of dedication by court.
35-21-823 and 35-21-824 reserved.
35-21-825. Sale of interment plots.
35-21-826. Resale of plots for profit — commissions — penalties.
35-21-827. Property interests in plot — estate tax.
35-21-828. Family plots.
35-21-829 and 35-21-830 reserved.
35-21-831. Termination of right of interment — limitation on right.
35-21-832. Conveyance to mausoleum-columbarium authority by plot owner.
35-21-833. Joint tenants.
35-21-834. Co-owners — mausoleum-columbarium authority liability.
35-21-835 through 35-21-839 reserved.
35-21-840. Records.
35-21-841 through 35-21-844 reserved.
35-21-845. Endowment care fund — investment of funds — use of income — permissible investment securities.
35-21-846. Plans for general care and endowment care.
35-21-847. Fund trustees — compensation — annual financial report.
35-21-848. Endowment care fund gifts and contributions.
35-21-849. Signs required for nonendowment and endowment care — penalties.
35-21-850. Annual report of endowment care mausoleum-columbarium.
35-21-851. Director, officer, or trustee loans — penalties.

Part 9 — First Special Service Force Memorial Trust
(Renumbered)

Part 1
General
(Repealed)

35-21-101. Repealed. Sec. 17, Ch. 52, L. 1997.

History: En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. Repealed. Sec. 17, Ch. 52, L. 1997.

History: En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519; amd. Sec. 11, Ch. 38, L. 1993.

35-21-103. Repealed. Sec. 17, Ch. 52, L. 1997.

History: (1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014; amd. Sec. 12, Ch. 38, L. 1993.

Part 2
Organization and Regulation of Business
(Repealed)

35-21-201. Repealed. Sec. 17, Ch. 52, L. 1997.

History: En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.

35-21-202. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.

35-21-203. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.

35-21-204. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part); amd. Sec. 13, Ch. 38, L. 1993.

35-21-205. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).

35-21-206. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.

35-21-207. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705; amd. Sec. 14, Ch. 38, L. 1993.

35-21-208. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706; amd. Sec. 15, Ch. 38, L. 1993.

35-21-209. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.

35-21-210. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.

35-21-211. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.

35-21-212. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.

35-21-213. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.

35-21-214. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712; amd. Sec. 16, Ch. 38, L. 1993.

35-21-215. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.

35-21-216. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714; amd. Sec. 160, Ch. 575, L. 1981; amd. Sec. 17, Ch. 38, L. 1993.

35-21-217. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716; amd. Sec. 18, Ch. 38, L. 1993.

Part 3
Disposition and Removal of Remains
(Repealed)

35-21-301. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.

35-21-302. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602; amd. Sec. 19, Ch. 38, L. 1993.

35-21-303. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603; amd. Sec. 20, Ch. 38, L. 1993.

35-21-304. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604; amd. Sec. 21, Ch. 38, L. 1993.

35-21-305. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.

35-21-307. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.

Part 4
Dedication of Property — Property Rights in Plots (Repealed)

35-21-401. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.

35-21-402. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.

35-21-403. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.

35-21-404. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.

35-21-405. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805; amd. Sec. 161, Ch. 575, L. 1981.

35-21-406. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.

35-21-407. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.

35-21-408. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.

35-21-409. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.

35-21-410. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.

35-21-411. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.

35-21-412. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.

35-21-413. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.

35-21-414. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.

35-21-415. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.

35-21-416. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.

35-21-417. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815; amd. Sec. 22, Ch. 38, L. 1993.

35-21-418. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.

35-21-419. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.

35-21-420. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.

35-21-421. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.

35-21-422. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.

35-21-423. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.

35-21-424. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.

35-21-425. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.

35-21-426. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.

35-21-427. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.

35-21-428. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.

35-21-429. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.

35-21-430. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.

35-21-431. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.

35-21-432. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.

35-21-433. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.

Part 5
Records
(Repealed)

35-21-501. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.

35-21-502. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.

35-21-503. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.

35-21-504. Repealed. Sec. 23, Ch. 38, L. 1993.
History: En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.

35-21-505. Repealed. Sec. 23, Ch. 38, L. 1993.
History: En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.

Part 6
Endowment Care and Trust Funds
(Repealed)

35-21-601. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.

35-21-602. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.

35-21-603. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.

35-21-604. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

35-21-605. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.

35-21-606. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.

35-21-607. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.

35-21-608. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.

35-21-609. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.

35-21-610. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.

35-21-611. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.

35-21-612. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.

35-21-613. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.

35-21-614. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.

35-21-615. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.

35-21-616. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.

35-21-617. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.

35-21-618. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.

35-21-619. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.

35-21-620. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.

35-21-621. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.

35-21-622. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.

35-21-623. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.

35-21-624. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.

35-21-625. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.

35-21-626. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Part 7
Desecration and Vandalism Regulation of Construction
(Repealed)

35-21-701. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.

35-21-702. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.

35-21-703. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.

35-21-704. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.

35-21-705. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.

35-21-706. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.

35-21-707. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.

35-21-708. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.

35-21-709. Repealed. Sec. 23, Ch. 38, L. 1993.
History: En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.

35-21-710. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.

35-21-711. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.

35-21-712. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.

35-21-713. Repealed. Sec. 17, Ch. 52, L. 1997.
History: En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.

Part 8
Mausoleum-Columbarium Authorities

35-21-801. Short title. This part may be cited as the “Mausoleum-Columbarium Act”.
History: En. Sec. 1, Ch. 283, L. 1999.

35-21-802. Definitions. For the purposes of this part, the following definitions apply:

(1) “Columbarium” means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) “Cremated remains” means all human remains recovered after the completion of cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(3) “Crypt” or “vault” means a space in a mausoleum of sufficient size used or intended to be used to entomb uncremated human remains.

(4) “Directors” means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(5) “Entombment” means the placement of human remains in a crypt or vault.

(6) “Human remains” or “remains” means the body of a deceased person and includes the body in any stage of decomposition .

(7) “Interment” means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(8) “Interment space” means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(9) “Inurnment” means placing cremated remains in an urn or other permanent container and placing it in a niche.

(10) “Mausoleum” means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(11) “Mausoleum-columbarium” means a building or structure containing both a mausoleum and a columbarium.

(12) “Mausoleum-columbarium authority” means any corporation, not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but does not refer to any corporation, for profit or not for profit, or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums or columbariums where interment is also made by ground burial.

(13) “Niche” means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. The terms include one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(15) "Plot owner" or "owner" means a person who is on record as owner of an interment in the office of a mausoleum-columbarium authority.

History: En. Sec. 2, Ch. 283, L. 1999.

35-21-803. Exemptions and limitations on applicability. (1) The provisions of this part relating to private, nonprofit mausoleums and columbariums do not apply to any of the following:

(a) a religious corporation, church, religious society or denomination, or corporation sole administering temporalities of any church or religious society or denomination or any cemetery, mausoleum, or columbarium organized, controlled, and operated by a religious corporation, church, religious society or denomination, or corporation sole; or

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) The provisions of this part do not affect the corporate existence or rights or powers of any cemetery corporation organized under the laws of this state in which a mausoleum or columbarium is situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This part applies only to mausoleums or columbariums owned, operated, or controlled by a nonprofit mausoleum-columbarium authority organized and governed as provided in this part and owning, operating, or controlling lands, buildings, and structures solely for the entombment and inurnment of human remains.

History: En. Sec. 3, Ch. 283, L. 1999.

35-21-804. Incorporation required to transact business. It is unlawful to engage in the business of a mausoleum-columbarium authority in this state except as an organized nonprofit corporation.

History: En. Sec. 4, Ch. 283, L. 1999.

35-21-805. General powers. (1) A mausoleum-columbarium authority has the same powers granted by law to nonprofit corporations in general, including the power to acquire property by purchase, donation, or devise.

(2) The powers, duties, and privileges conferred and imposed on a mausoleum-columbarium authority under the laws of this state are enlarged as each particular case may require to conform to the provisions of this part.

(3) A nonprofit corporation organized under the laws of this state and authorized by its articles of incorporation to do so may as a mausoleum-columbarium authority establish, maintain, manage, operate, or improve a mausoleum or columbarium.

(4) A mausoleum-columbarium authority may:

(a) adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum or columbarium;

(b) restrict and limit the use of all property within its mausoleum or columbarium;

(c) regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium;

(d) regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium grounds;

(e) regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium grounds;

(f) prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules;

(g) regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds; and

(h) make and enforce rules for all other purposes considered necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum or columbarium, for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum or columbarium is conducted.

(5) Rules adopted pursuant to this section must be subject to inspection in the office of the mausoleum-columbarium authority.

History: **En. Sec. 5, Ch. 283, L. 1999.**

35-21-806 through 35-21-809 reserved.

35-21-810. Disposition of remains — liability. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, is as provided in 37-19-904.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent listed in 37-19-904 in the same degree of kindred and upon the estate of the decedent.

(3) A person signing an authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the person's authority to order the interment. The person signing the authorization is personally liable for all damage occasioned by or resulting from breach of the warranty.

(4) The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person representing to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that presentation is untrue.

History: **En. Sec. 6, Ch. 283, L. 1999; amd. Sec. 10, Ch. 208, L. 2009.**

35-21-811. Limitations on actions — exemptions from liability. An action may not lie against any mausoleum-columbarium authority relating to the remains of a person that have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for care of the remains or unless permanent interment has been made. This section may not be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. A licensed mortician or funeral director is not liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in Montana.

History: **En. Sec. 7, Ch. 283, L. 1999.**

35-21-812. Removal of remains — when removal excepted. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) the surviving brothers or sisters of the decedent;

(e) a close relative of the decedent; or

(f) in the absence of a person listed in subsections (1)(a) through (1)(e), a personal representative, a public administrator, the decedent through a preneed authorization, or others designated by the board of funeral service by rule.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient if the permission does not violate the terms of a written contract or rules of the mausoleum-columbarium authority.

(3) Notice of application to the court for the permission provided for in subsection (2) must be given at least 15 days prior to a hearing on the application to the mausoleum-columbarium authority and to persons listed in subsections (1)(a) through (1)(e) not consenting and to other persons on whom service of notice may be required by the court.

History: **En. Sec. 8, Ch. 283, L. 1999.**

35-21-813 through 35-21-819 reserved.

35-21-820. Map or plat — filing — tax exemption. (1) Each mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall prepare a map or plat that delineates the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

(2) The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the map or plat dedicating the property exclusively to interment purposes.

(3) Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes. After filing, the property and all mausoleums and columbariums constructed on and burial plots located in the property must be held, occupied, and used exclusively for interment purposes and are exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

(4) Any part or subdivision of the property mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: En. Sec. 9, Ch. 283, L. 1999.

35-21-821. Effect of dedication. (1) The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

(2) After property is dedicated to interment purposes, neither the dedication nor the title of a plot owner may be affected by the dissolution of the mausoleum-columbarium authority, by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this part.

(3) Dedication to interment purposes pursuant to this section is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and must be considered to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

(4) After dedication and as long as the property remains dedicated to interment purposes, a railroad, street, road, alley, pipeline, pole line, or other public thoroughfare utility may not be laid out through, over, or across any part of the property without the consent of the mausoleum-columbarium authority owning and operating the property or of not less than two-thirds of the owners of interment plots within the property.

History: En. Sec. 10, Ch. 283, L. 1999.

35-21-822. Removal of dedication by court. (1) Property dedicated to interment purposes must be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of the property by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) that interments were not made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and

(b) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(2) The notice of hearing must be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where the mausoleum or columbarium is located and by posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(3) The notice must:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that interments have not been made in the portion of the mausoleum or columbarium property sought to be removed from dedication; and

(c) specify the time and place of the hearing.

History: En. Sec. 11, Ch. 283, L. 1999.

35-21-823 and 35-21-824 reserved.

35-21-825. Sale of interment plots. (1) After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots, subject to the rules then in effect or adopted by the mausoleum-columbarium authority and subject to other limitations, conditions, and restrictions that may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of an interment plot.

(2) All conveyances made by a mausoleum-columbarium authority must be signed by an officer or officers as are authorized by the mausoleum-columbarium authority.

(3) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: En. Sec. 12, Ch. 283, L. 1999.

35-21-826. Resale of plots for profit — commissions — penalties. (1) It is unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit.

(2) It is unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission, bonus, rebate, or other thing of value for the sale of a plot or services. This subsection does not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the mausoleum-columbarium authority previously appointed for that purpose.

(3) A person who violates a provision of this section or who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in subsection (2), any commission, bonus, rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any mausoleum or columbarium is guilty of a misdemeanor, and each violation constitutes a separate offense.

History: En. Sec. 13, Ch. 283, L. 1999.

35-21-827. Property interests in plot — estate tax. (1) All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

(2) The spouse of an owner of a plot containing more than one interment space has a vested right to be interred in the plot, and a person becoming the spouse of the plot owner has a vested right to be interred in the plot if an interment space not subject to the vested right of interment for previous spouses is unoccupied at the time that the person becomes the spouse of the owner.

(3) A conveyance or other action of the owner without the written consent or joinder of the spouse of the owner may not divest the spouse of a vested right of interment, except that a final decree of dissolution of marriage between the owner and the spouse terminates the vested right of interment unless otherwise provided in the decree.

(4) If an interment is not made in a plot that has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred in the plot are lawfully removed, the plot descends upon the death of the owner to the owner's heirs-at-law, subject to the rights of interment of the decedent and the owner's surviving spouse unless the owner has disposed of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

(5) Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all estate taxes.

History: En. Sec. 14, Ch. 283, L. 1999; amd. Sec. 13, Ch. 9, Sp. L. May 2000.

35-21-828. Family plots. (1) Whenever the remains of the record owner or of a member of the owner's family or of a relative of a member of the owner's family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner has died without making disposition of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot becomes inalienable and must be held as the family plot of the owner.

(2) In a family plot, one crypt or one niche or interment space in the family plot may be used for the owner's interment and one for the owner's surviving spouse, if any, who by law has a vested right of interment in it. Of those crypts, niches, or spaces remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming an interest in the plot.

(3) If a parent or child is not surviving, the right of interment goes in the order of death first to the spouse of any child of the record owner and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

(4) A surviving spouse, parent, child, or heir having a right of interment in a family plot may waive the right in favor of any other relative or spouse of a relative of the deceased owner, and upon the waiver, the remains of the person in whose favor the waiver is made may be interred in the plot.

History: En. Sec. 15, Ch. 283, L. 1999.

35-21-829 and 35-21-830 reserved.

35-21-831. Termination of right of interment — limitation on right. (1) A vested right of interment is terminated upon interment elsewhere of the person with the vested right.

(2) A vested right of interment does not give to any person the right to have the person's remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred or the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

History: En. Sec. 16, Ch. 283, L. 1999.

35-21-832. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments must be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 17, Ch. 283, L. 1999.

35-21-833. Joint tenants. (1) In a conveyance to two or more persons as joint tenants, each joint tenant has a vested right of interment in the plot conveyed.

(2) Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

(3) An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

History: En. Sec. 18, Ch. 283, L. 1999.

35-21-834. Co-owners — mausoleum-columbarium authority liability. (1) When there are several owners of a plot or of rights of interment in the plot, the owners may designate one or more persons to represent the plot and file written notice of the designation with the mausoleum-columbarium authority.

(2) In the absence of a notice provided for in subsection (1) or a written objection to an interment, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

History: En. Sec. 19, Ch. 283, L. 1999.

35-21-835 through 35-21-839 reserved.

35-21-840. Records. (1) A record must be kept of the ownership of all plots in the mausoleum and columbarium that have been conveyed by the mausoleum-columbarium authority and of all transfers of plots. The transfer of any plot or any right of interment is not complete or effective until recorded on the books of the mausoleum-columbarium authority.

(2) The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments are made shall keep a record of all remains, including cremated remains, interred on the premises under its charge, in each case stating the name of each deceased person, date of interment, and name and address of the funeral director.

(3) The records required under this section must be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 20, Ch. 283, L. 1999.

35-21-841 through 35-21-844 reserved.

35-21-845. Endowment care fund — investment of funds — use of income — permissible investment securities. (1) A mausoleum-columbarium authority may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment, and the income from the funds must be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

(3) The principal of all funds for endowment care must forever remain irreducible and inviolable and must be maintained separate and distinct from all other funds.

(4) The principal of all funds for endowment care must be invested, from time to time reinvested, and kept invested, and the income earned must be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium, or both, and the grounds on which they are situated and must be applied in a manner that the mausoleum-columbarium authority may from time to time determine to be for the best interests of the mausoleum-columbarium.

(5) The endowment care funds must be invested, reinvested, and kept invested in securities that are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: En. Sec. 21, Ch. 283, L. 1999.

35-21-846. Plans for general care and endowment care. (1) The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

(2) Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

(3) Upon the application of the owner of any plot and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with the owner for the care of the owner's plot and its appurtenances.

History: En. Sec. 22, Ch. 283, L. 1999.

35-21-847. Fund trustees — compensation — annual financial report. (1) The mausoleum-columbarium authority may appoint a board of trustees, of not less than five members, for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

(2) The directors of a mausoleum-columbarium authority may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

(3) In lieu of the appointment of a board of trustees of its endowment care fund, a mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and the bank or trust company is authorized to receive and accept the fund and all accretions to the fund, including any accumulated endowment care fund in existence at the time of the bank's or trust company's appointment.

(4) A sum in excess of 5% of the income derived from the fund in any year may not be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of the income

divided by the number of trustees is less than $100, each trustee is entitled to receive a minimum of $100 a year for serving as a trustee.

(5) The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report, verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care fund.

History: **En. Sec. 23, Ch. 283, L. 1999.**

35-21-848. Endowment care fund gifts and contributions. (1) (a) A mausoleum-columbarium authority that has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

(b) A mausoleum-columbarium authority that has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to any of the following purposes:

(i) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(ii) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds on which the mausoleum-columbarium is situated;

(iii) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(iv) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

(2) The endowment care fund and all payments or contributions to it are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(3) A payment, gift, grant, bequest, or other contribution for general endowment care is not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, and the fund or any contribution to it is not invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: **En. Sec. 24, Ch. 283, L. 1999.**

35-21-849. Signs required for nonendowment and endowment care — penalties. (1) A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund.

(2) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: “This is an endowment care property”.

(3) Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: “This is not an endowment care property”. This phrase likewise must be printed or stamped at the beginning of all contracts, certificates of ownership, or deeds.

(4) Any corporation or its agents or representatives who violate any of the provisions of this section or make any false statement appearing on a sign, contract, agreement, receipt, statement, literature, or other publication are guilty of a misdemeanor.

History: **En. Sec. 25, Ch. 283, L. 1999.**

35-21-850. Annual report of endowment care mausoleum-columbarium. (1) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report that must be available to any plot owner and that must contain, as of the close of its last fiscal year:

(a) the amount of principal of the endowment care fund; and

(b) the total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which must actually show the financial condition of the trust.

(2) All of the information appearing on the report filed in the mausoleum-columbarium authority office must be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 26, Ch. 283, L. 1999.

35-21-851. Director, officer, or trustee loans — penalties. (1) A director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care fund may not borrow any endowment care or special care funds of the corporation, directly or indirectly.

(2) A director, officer, or trustee authorizing or consenting to a loan and the person who receives a loan in violation of this section are severally guilty of a misdemeanor.

History: En. Sec. 27, Ch. 283, L. 1999.

Part 9
First Special Service Force Memorial Trust
(Renumbered)

35-21-901. Renumbered 10-2-701. Sec. 99(3), Ch. 51, L. 1999.

35-21-902. Renumbered 10-2-702. Sec. 99(3), Ch. 51, L. 1999.

35-21-903. Renumbered 10-2-703. Sec. 99(3), Ch. 51, L. 1999.

TITLE 36
RESERVED

TITLE 37

PROFESSIONS AND OCCUPATIONS

Ch.
1. General Provisions.
2. General Provisions Relating to Health Care Practitioners.
3. Medicine.
4. Dentistry and Dental Hygiene.
5. Osteopathy. Repealed.
6. Podiatry.
7. Pharmacy.
8. Nursing.
9. Nursing Home Administrators.
10. Optometry.
11. Physical Therapy.
12. Chiropractic.
13. Acupuncture Practice Act.
14. Radiologic Technologists.
15. Speech-Language Pathologists and Audiologists.
16. Hearing Aid Dispensers.
17. Psychologists.
18. Veterinary Medicine.
19. Morticians and Funeral Directors.
20. Physician Assistants.
21. Dietitians. Repealed.
22. Social Work.
23. Professional Counseling.
24. Occupational Therapy.
25. Nutritionists.
26. Naturopathic Physicians.
27. Direct-Entry Midwifery.
28. Respiratory Care Practitioners.
29. Denturitry.
30. Barbers. Renumbered and Repealed.
31. Barbering, Cosmetology, Electrology, Esthetics, and Manicuring.
32. Electrology. Repealed.
33. Massage Therapy.
34. Clinical Laboratory Science Practitioners.
35. Addiction Counselors.
36. Athletic Trainers.
37. Marriage and Family Therapists.

Chapters 38 and 39 reserved.

40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners. Repealed.
42. Water Treatment Plant Operators.
43. Water Well Contractors.

Chapters 44 through 46 reserved.

47. Outfitters and Guides.
48. Private Alternative Adolescent Residential or Outdoor Programs.

Chapter 49 reserved.

50. Public Accountants.
51. Real Estate Brokers and Salespersons.
52. Title Abstracters. Repealed.
53. Timeshare Sales.
54. Real Estate Appraisers.

Chapters 55 through 59 reserved.

60. Private Investigators, Private Security and Fire Entities, and Process Servers.
61. Attorneys at Law.
62. Polygraph Examiners. Repealed.

Chapters 63 and 64 reserved.

65. Architecture.
66. Landscape Architecture.
67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning. Repealed.
71. Public Contractors. Repealed.
72. Construction Blasting.

73. Elevator Contractors, Mechanics, and Inspectors.
Chapter 74 reserved.
75. Direct-Entry Midwifery. Renumbered.
76. Athletic Agents. Repealed.

Title Cross-References

Licensing of athletics and boxing and wrestling matches, Title 23, ch. 3.
Licensing of horseracing, Title 23, ch. 4.
Gambling, Title 23, ch. 5.
Licensing of savings and loan agents, 32-2-409.
Licensing of residential mortgage brokers and loan originators, Title 32, ch. 9.
Licensing and registration of insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.
Contractor registration, Title 39, ch. 9.

CHAPTER 1
GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

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37-1-402. Unprofessional conduct — complaint — investigation — immunity.
37-1-403. Notice — request for hearing.
37-1-404. Hearing — adjudicative procedures.
37-1-405. Findings of fact — order — report.
37-1-406. Sanctions — stay — costs — stipulations.
37-1-407. Appeal.
37-1-408. Reinstatement.
37-1-409. Enforcement of fine.
37-1-410. Unprofessional conduct.
37-1-411. Practice without license — investigation of complaint — injunction — penalties.
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Part 1
Duties and Authority of Department, Director, and Boards

Part Cross-References

Contested cases, Title 2, ch. 4, part 6.
Appointment and qualifications of department heads — duties, 2-15-111, 2-15-112.
Allocation for administrative purposes only, 2-15-121.
Department and boards created, Title 2, ch. 15, part 18.
Department's duties for Board of Horseracing, 23-4-103.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board or a program within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(d);

(9) (a) provide notice to the board and to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(b) suspend all duties under this title related to the board except for services related to renewal of licenses;

(c) review the need for a board and make recommendations to the legislative interim committee with monitoring responsibility for the boards for legislation revising the board's operations to achieve fiscal solvency; and

(d) notwithstanding 2-15-121, recover the costs by one-time charges against all licensees of the board after providing notice and meeting the requirements under the Montana Administrative Procedure Act;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary;

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

(12) adopt uniform rules for all boards and department programs to comply with the public notice requirements of 37-1-311 and 37-1-405. The rules may require the posting of only the licensee's name and the fact that a hearing is being held when the information is being posted on a publicly available website prior to a decision leading to a suspension or revocation of a license or other final decision of a board or the department.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005; amd. Sec. 17, Ch. 11, L. 2007; amd. Sec. 39, Ch. 44, L. 2007; amd. Sec. 1, Ch. 225, L. 2007.

37-1-102. Renumbered 37-1-121. Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131. Code Commissioner, 1981.

37-1-104. Standardized forms. The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107. Joint meetings — department duties. (1) The department shall convene a joint meeting once every 2 years of two or more boards that:

(a) have licensees with dual licensure in related professions or occupations;

(b) have licensees licensed by another board in a related profession or with similar scopes of practice, including but not limited to:

(i) health care boards;

(ii) mental health care boards;

(iii) design boards;

(iv) therapeutic boards; or

(v) technical boards; or

(c) have issues of joint concern or related jurisdiction with each other.

(2) A quorum is not required for the joint meeting. However, one member from each board shall attend.

(3) The department shall report to the interim committee responsible for monitoring boards with regard to attendance and issues of concern addressed by the boards.

History: En. Sec. 1, Ch. 11, L. 2007.

37-1-108 through 37-1-120 reserved.

37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

37-1-122 through 37-1-129 reserved.

37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 46 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005; amd. Sec. 7, Ch. 502, L. 2007.

37-1-131. Duties of boards — quorum required. (1) A quorum of each board within the department shall:

(a) (i) set and enforce standards and adopt and enforce rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction; and

(ii) apply the standards and rules referred to in subsection (1)(a)(i) in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board and that does not restrain trade or competition unless necessary to protect public health and safety;

(b) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(c) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (1)(b), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(d) take disciplinary action against the license of a person in a medical assistance program under chapter 3, 4, 7, or 8 if, in the period under contract, the licensee has on three separate occasions returned to the use of a prohibited or proscribed substance. The requirements of this subsection (1)(d) may not be construed as affecting the rights of an employer to evaluate, discipline, or discharge an employee.

(e) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(f) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(2) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(3) A board that requires continuing education or continued state, regional, or national certification for licensees shall require licensees reactivating an expired license to submit proof of meeting the requirements of this subsection for the renewal cycle.

(4) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure, as provided in 37-1-306, or require continued state, regional, or national certification for licensure. Except as provided in subsection (3), if the board or department requires continuing education or continued state, regional, or national certification for continued licensure, the board or department may not audit or require proof of continuing education or continued state, regional, or national certification requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits after the lapsed date of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement.

(5) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

(6) A board shall adopt rules governing the provision of public notice as required by 37-1-311.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005; amd. Sec. 2, Ch. 225, L. 2007; amd. Sec. 8, Ch. 502, L. 2007; amd. Sec. 1, Ch. 51, L. 2011; amd. Sec. 3, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 51 in (1)(a)(i) inserted "adopt and enforce"; inserted (1)(a)(ii) regarding application of standards and rules referred to in subsection (1)(a)(i); and made minor changes in style. Amendment effective October 1, 2011.

Chapter 122 inserted (1)(d) regarding disciplinary action of a person in a medical assistance program; and made minor changes in style. Amendment effective October 1, 2011.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 3, Ch. 225, L. 2007.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

37-1-138. Protection of professional licenses for activated military reservists — rulemaking authority — definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

37-1-139 and 37-1-140 reserved.

37-1-141. License renewal — lapse — expiration — termination. (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

37-1-142. *(Temporary)* **Review of licensing boards — termination.** (1) (a) The interim committee responsible for monitoring professional and occupational licensing boards shall in each interim review one-half of the licensing boards to determine whether the boards remain necessary for a public purpose and meet the criteria in subsection (2). A board that does not meet the criteria may be referred to the next legislature to be terminated on June 30 following the legislative session.

(b) The review in the first interim after May 5, 2011, must start with the oldest established boards. The review in the second interim after May 5, 2011, must include the remaining boards. This review process must be repeated in the subsequent two interims.

(2) The criteria to be used to determine if a board meets a public purpose includes information describing whether:

(a) the unregulated practice of the occupation or profession creates a direct, immediate hazard to the public health, safety, or welfare;

(b) the scope of practice is readily identifiable and distinguishable from the scope of practice of other professions and occupations;

(c) the occupation or profession requires a specialized skill or training for which nationally recognized standards of education and training exist;

(d) qualifications for licensure are justified;

(e) a public benefit is provided by licensure;

(f) licensure significantly increases the cost of service to the public; and

(g) public support exists for licensure.

(3) After a presentation and public comment during the review before the interim committee, the interim committee shall report to the legislature convening in the next odd-numbered year which boards, if any, fail to meet a majority of the criteria in subsection (2) and may recommend termination. The recommendation also must include information from the department regarding the board's ability to remain solvent or achieve fiscal solvency as provided in 37-1-101. *(Terminates December 31, 2018—sec. 4, Ch. 330, L. 2011.)*

History: En. Sec. 1, Ch. 330, L. 2011.

Compiler's Comments

Effective Date: Section 3, Ch. 330, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 5, 2011.

Termination: Section 4, Ch. 330, L. 2011, provided: "[This act] terminates December 31, 2018."

Part 2
Licensure of Criminal Offenders

Part Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Gambling — qualifications for licensure, 23-5-176.
Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.
No outfitter's license issued to criminal offender, 37-47-302.
Effect of conviction, 46-18-801.
Supervision of probationers and parolees, Title 46, ch. 23, part 10.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public. The legislature finds that the process of licensure will be strengthened by instituting an effective mechanism for obtaining accurate public information regarding a license applicant's criminal background.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001; amd. Sec. 1, Ch. 389, L. 2007.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.
Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction is evidence of rehabilitation. However, the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought, and this chapter may not be construed to prohibit licensure of a person while the person is under state supervision if the licensing agency finds insufficient evidence to preclude licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005; amd. Sec. 1349, Ch. 56, L. 2009.

Part 3

Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation, regardless of the specific term used for the permission, including permit, certificate, recognition, or registration.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005; amd. Sec. 9, Ch. 502, L. 2007.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(d), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995; amd. Sec. 40, Ch. 44, L. 2007.

37-1-304. Licensure of out-of-state applicants — reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may be issued if the applicant affirms or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997; amd. Sec. 1, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (2) in first sentence at beginning before "verification" substituted current text for "The license may not be issued until the board receives" and inserted second sentence regarding suspension of license. Amendment effective October 1, 2011.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may be issued in the board's discretion if the applicant verifies or states in the application that the applicant has requested verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment. If the board or its screening panel finds reasonable cause to believe that the applicant falsely affirmed or stated that the applicant has requested verification from the other state or states, the board may summarily suspend the license pending further action to discipline or revoke the license.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999; amd. Sec. 2, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) in third sentence before "verification" substituted current text for "The permit may not be issued until the board receives" and inserted fourth sentence regarding suspension of license. Amendment effective October 1, 2011.

37-1-306. Continuing education. A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel is an agency for purposes of summary suspensions under 2-4-631. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information, as defined in 44-5-103, regarding the board's licensees and license applicants and regarding possible unlicensed practice, but the board may not record or retain any confidential criminal justice information without complying with the provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5.

(3) A board may contact and request information from the department of justice, which is designated as a criminal justice agency within the meaning of 44-5-103, for the purpose of obtaining criminal history record information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

(4) (a) A board that is statutorily authorized to obtain a criminal background check as a prerequisite to the issuance of a license shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(b) The applicant shall sign a release of information to the board and is responsible to the department of justice for the payment of all fees associated with the criminal background check.

(c) Upon completion of the criminal background check, the department of justice shall forward all criminal history record information, as defined in 44-5-103, in any jurisdiction to the board as authorized in 44-5-303.

(d) At the conclusion of any background check required by this section, the board must receive the criminal background check report but may not receive the fingerprint card of the applicant. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant.

[(5) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] *(Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.)*

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005; amd. Sec. 2, Ch. 389, L. 2007; amd. Sec. 3, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1)(d) inserted second sentence regarding summary suspensions. Amendment effective October 1, 2011.

Contingent Termination — Request for Federal Exemptions: Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 95] [61-5-107];

(e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

37-1-308. Unprofessional conduct — complaint — investigation — immunity — exceptions. (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

37-1-309. Notice — request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

37-1-310. Hearing — adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. Findings of fact — order — report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-309, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

History: En. Sec. 11, Ch. 429, L. 1995; amd. Sec. 4, Ch. 225, L. 2007.

37-1-312. Sanctions — stay — costs — stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 50, chapter 46, part 3.

History: En. Sec. 16, Ch. 429, L. 1995; amd. Sec. 12, Ch. 109, L. 2009; amd. Sec. 2, Ch. 158, L. 2009; amd. Sec. 24, Ch. 419, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 419 inserted (19) relating to use of electronic means to obtain information relating to registry identification cards for medical use of marijuana. Amendment effective July 1, 2011.

37-1-317. Practice without license — investigation of complaint — injunction — penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

37-1-318. Violation of injunction — penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-1-320. Mental intent — unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

37-1-321 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

Part 4
Uniform Regulations for Licensing Programs Without Boards

37-1-401. Uniform regulation for licensing programs without boards — definitions. As used in this part, the following definitions apply:

(1) "Complaint" means a written allegation filed with the department that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a complaint or other information before the department, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the department;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether the department should seek an injunction.

(4) "License" means permission in the form of a license, permit, endorsement, certificate, recognition, or registration granted by the state of Montana to engage in a business activity or practice at a specific level in a profession or occupation governed by:

(a) Title 37, chapter 35, 72, or 73; or

(b) Title 50, chapter 39, 74, or 76.

(5) "Profession" or "occupation" means a profession or occupation regulated by the department under the provisions of:

(a) Title 37, chapter 35, 72, or 73; or

(b) Title 50, chapter 39, 74, or 76.

History: En. Sec. 1, Ch. 481, L. 1997; amd. Sec. 111, Ch. 483, L. 2001; amd. Sec. 21, Ch. 410, L. 2003; amd. Sec. 18, Ch. 11, L. 2007; amd. Sec. 10, Ch. 502, L. 2007.

37-1-402. Unprofessional conduct — complaint — investigation — immunity. (1) A person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have violated a requirement of this part, the department may investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

History: En. Sec. 2, Ch. 481, L. 1997.

37-1-403. Notice — request for hearing. (1) If the department determines that reasonable cause exists supporting the allegation made in a complaint, the department legal staff shall prepare a notice and serve the alleged violator. The notice may be served by certified mail to the current address on file with the department or by other means authorized by the Montana Rules of Civil Procedure.

(2) A licensee or license applicant shall give the department the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and must be received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the department may enter a decision on the basis of the facts available to it.

History: En. Sec. 3, Ch. 481, L. 1997.

37-1-404. Hearing — adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies, the Montana Rules of Civil Procedure, and the Montana Rules of Evidence govern a hearing under this part. The department has all the powers and duties granted by Title 2, chapter 4.

History: **En. Sec. 4, Ch. 481, L. 1997.**

37-1-405. Findings of fact — order — report. (1) If the department finds by a preponderance of the evidence, following a hearing or on default, that a violation of this part has occurred, the department shall prepare and serve findings of fact, conclusions of law, and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve an order of dismissal of the charges.

(2) (a) The department shall within a reasonable amount of time report to the public the issuance of a summary suspension, a notice under 37-1-403, an accepted stipulation, a hearing examiner's proposed decision, and a final order.

(b) In addition to any other means of notice, the department shall post the required information on a publicly available website.

(c) This subsection (2) may not be construed to require a meeting to be open or records to be disseminated when the demands of individual privacy clearly exceed the merits of public disclosure.

History: **En. Sec. 5, Ch. 481, L. 1997; amd. Sec. 5, Ch. 225, L. 2007.**

37-1-406. Sanctions — stay — costs — stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (4), the department may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;
(b) suspension of the license for a fixed or indefinite term;
(c) restriction or limitation of the practice;
(d) satisfactory completion of a specific program of remedial education or treatment;
(e) monitoring of the practice by a supervisor approved by the disciplining authority;
(f) censure or reprimand, either public or private;
(g) compliance with conditions of probation for a designated period of time;
(h) payment of a fine not to exceed $1,000 for each violation;
(i) denial of a license application;
(j) refund of costs and fees billed to and collected from a consumer.

(2) Any fine collected by the department as a result of disciplinary actions must be deposited in the state general fund.

(3) A sanction may be totally or partly stayed by the department. To determine which sanctions are appropriate, the department shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the department consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(4) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(5) A licensee shall surrender a suspended or revoked license to the department within 24 hours after receiving notification of the suspension or revocation by mailing the license or delivering it personally to the department.

History: **En. Sec. 6, Ch. 481, L. 1997.**

37-1-407. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: **En. Sec. 7, Ch. 481, L. 1997.**

37-1-408. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the department for reinstatement after an interval set by the department in the order. The department may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The department may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 8, Ch. 481, L. 1997.

37-1-409. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the department may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 9, Ch. 481, L. 1997.

37-1-410. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant in a profession or occupation governed by this part:

(1) being convicted, including a conviction following a plea of nolo contendere and regardless of a pending appeal, of a crime relating to or committed during the course of practicing the person's profession or occupation or involving violence, the use or sale of drugs, fraud, deceit, or theft;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) committing fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) making a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) receiving a denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal or under judicial review or has been satisfied;

(8) failing to comply with a term, condition, or limitation of a license by final order of the department;

(9) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(10) misappropriating property or funds from a client or workplace or failing to comply with the department's rule regarding the accounting and distribution of a client's property or funds;

(11) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts, failure to respond to department inquiries regarding a complaint against the licensee or license applicant, or the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action or use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(12) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice the profession or occupation by use of the licensee's license;

(13) using alcohol, an illegal drug, or a dangerous drug, as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties; or

(14) exhibiting conduct that does not meet generally accepted standards of practice. A certified copy of a judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring within the scope of practice and the course of the practice is considered conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 10, Ch. 481, L. 1997; amd. Sec. 11, Ch. 502, L. 2007; amd. Sec. 13, Ch. 109, L. 2009.

37-1-411. Practice without license — investigation of complaint — injunction — penalties. (1) The department may investigate a complaint or other information received concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part.

History: En. Sec. 11, Ch. 481, L. 1997; amd. Sec. 5, Ch. 230, L. 1999.

37-1-412. Violation of injunction — penalty. (1) A person who has been enjoined and who violates an injunction issued pursuant to a proceeding under this part may be held in contempt of court and shall pay a civil penalty, as determined by the court, of not more that $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

History: En. Sec. 12, Ch. 481, L. 1997; amd. Sec. 6, Ch. 230, L. 1999.

37-1-413. Department authority. For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

History: En. Sec. 4, Ch. 230, L. 1999.

CHAPTER 2
GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107. Civil penalty for unreadable prescription.
37-2-108 through 37-2-110 reserved.
37-2-111. Repealed.

Part 2 — Nonliability for Peer Review—Confidentiality of Medical Assistance Program Information

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.
37-2-202. Confidentiality of medical assistance program information — health care information.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.
37-2-304. Failure of health care provider to obtain insurance as unprofessional conduct.
37-2-305 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.
37-2-313 and 37-2-314 reserved.
37-2-315. Direct billing for anatomic pathology services.
37-2-316. Assistance program audits.

Part 4 — Medical Practice Group Quality Assurance

37-2-401. Definitions.
37-2-402. Quality assurance program activities.
37-2-403. Quality assurance committee access to information.
37-2-404. Medical practice group quality assurance — confidentiality — exception — liability of members.
37-2-405 through 37-2-408 reserved.
37-2-409. Quality assurance guidelines — reviews — contracts.
37-2-410. Restrictions on use or publication of information.

Part 1
Dispensing of Drugs

Part Cross-References

Pharmacy, Title 37, ch. 7.
Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10.
Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It is unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income of the company with the intent or for the purpose of inducing the medical practitioner to prescribe to patients the drugs of the company. The giving or selling of an interest by the company to a medical practitioner without the interest first having been publicly offered to the general public is prima facie evidence of the intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it is not unlawful for a medical practitioner to acquire or own an interest solely for investment, and the acquisition of an interest that is publicly offered to the general public is prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902; amd. Sec. 1350, Ch. 56, L. 2009.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It is unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. This subsection does not prohibit a medical practitioner from dispensing a drug that the medical practitioner is permitted to dispense under 37-2-104.

(2) It is unlawful for a medical practitioner, directly or indirectly, to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by the community pharmacy of drugs to patients of a medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904; amd. Sec. 1351, Ch. 56, L. 2009.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged contraceptives, other than mifepristone, by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

(h) a medical practitioner from dispensing a drug if the medical practitioner has prescribed the drug and verified that the drug is not otherwise available from a community pharmacy. A drug dispensed pursuant to this subsection (2)(h) must meet the labeling requirements of the board of pharmacy.

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995; amd. Sec. 1, Ch. 125, L. 2007; amd. Sec. 1, Ch. 166, L. 2009.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.
Duties of County Attorneys generally, Title 7, ch. 4, part 27.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).
Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) do not apply to a medical practitioner with respect to any interest that the medical practitioner owns on July 1, 1971. However, transfer of this interest to another person results in immediate termination of the exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906; amd. Sec. 1352, Ch. 56, L. 2009.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107. Civil penalty for unreadable prescription. (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than $500 for each prescription.

History: En. Sec. 1, Ch. 436, L. 2005.

37-2-108 through 37-2-110 reserved.

37-2-111. Repealed. Sec. 75, Ch. 492, L. 2001.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2

Nonliability for Peer Review — Confidentiality of Medical Assistance Program Information

Part Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Montana Medical Legal Panel created, 27-6-104.

Licensing investigation and review — record access, 37-1-135.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within the individual's knowledge, but the individual may not be questioned about the individual's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989; amd. Sec. 1353, Ch. 56, L. 2009.

37-2-202. Confidentiality of medical assistance program information — health care information. (1) The proceedings and records of a medical assistance program created in chapter 3, 4, 7, or 8 relating to a licensee who has received or is receiving assistance from the medical assistance program:

(a) are confidential and are considered to be proceedings and records of a professional standards review committee under 37-2-201; and

(b) are not subject to discovery or introduction into evidence in any administrative or judicial proceeding other than a disciplinary proceeding against the licensee before the applicable licensing board. If the proceedings and records are introduced into evidence in a disciplinary proceeding, the introduced materials are public unless otherwise protected by law.

(2) Any health care information, as defined in 50-16-803, that is maintained by a health care provider in the provision of health care services to a licensee participating in a medical assistance program provided for in chapter 3, 4, 7, or 8 is subject to discovery from the licensee or the health care provider and to introduction into evidence in an administrative or judicial proceeding as may otherwise be allowed by law.

History: En. Sec. 2, Ch. 122, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 3
Miscellaneous Provisions

Part Cross-References

Doctor-patient privilege, 26-1-805.
Libel and slander, Title 27, ch. 1, part 8.
Report of fetal death that occurs outside licensed medical facility, 46-4-114.
Communicable disease defined, 50-1-101.
Powers of Department relating to communicable diseases, 50-1-202.
Report of exposure to infectious disease, Title 50, ch. 16, part 7.
Report of exposure to infectious disease — immunity from liability, 50-16-704.
Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 is presumed to be acting in good faith and in reporting is immune from any liability, civil or criminal, unless the individual acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051; amd. Sec. 1354, Ch. 56, L. 2009.

37-2-304. Failure of health care provider to obtain insurance as unprofessional conduct. In addition to the conduct described in 37-1-316, failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a) requiring insurance constitutes unprofessional conduct.

History: En. Sec. 3, Ch. 158, L. 2009.

37-2-305 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to the person's condition to the department of justice. The department, upon receiving the report, shall require the person reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection (2), without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991; amd. Sec. 1355, Ch. 56, L. 2009.

37-2-312. Physician's immunity from liability. A physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of the physician's actions pursuant to 37-2-311 except for damages occasioned by gross negligence. An action may not be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983; amd. Sec. 1356, Ch. 56, L. 2009.

37-2-313 and 37-2-314 reserved.

37-2-315. Direct billing for anatomic pathology services. (1) A clinical laboratory or physician providing anatomic pathology services for a patient may present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

(a) the patient;

(b) the patient's insurer or other third-party payor;

(c) the health care facility ordering the services;

(d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or

(e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

(a) a patient;

(b) an insurer;

(c) a health care facility; or

(d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

History: En. Sec. 1, Ch. 266, L. 2005.

37-2-316. Assistance program audits. (1) In each 10-year period, the medical assistance programs provided for in chapters 3, 4, 7, and 8 must be audited for performance objectives as determined by each licensing board in chapters 3, 4, 7, and 8 at least twice, as provided in subsections (2) and (3).

(2) Licensing boards in chapters 3, 4, 7, and 8 shall jointly contract and pay for an external audit of the relevant assistance program once every 5 years. The department shall assess the costs to each licensing board in chapters 3, 4, 7, and 8 for the external audit over a corresponding period.

(3) The department shall arrange for an internal audit midway through the subsequent 5-year period and shall assess costs to the licensing boards in chapters 3, 4, 7, and 8 for the internal audit, budgeting over the corresponding period.

History: En. Sec. 1, Ch. 122, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 4
Medical Practice Group Quality Assurance

Part Compiler's Comments

Effective Date: Section 8, Ch. 291, L. 2011, provided that this part is effective April 28, 2011.

37-2-401. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a quality assurance committee that are used exclusively in connection with quality assessment or improvement activities, including but not limited to the professional training, supervision, or discipline of a medical practitioner by a medical practice group.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident report" or "occurrence report" means the written business record of a medical practice group created in response to an untoward event, including but not limited to a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event by a quality assurance committee that was conducted in response to an incident report or occurrence report.

(4) "Medical practice group" means a group of two or more medical practitioners practicing medicine in a professional corporation, professional limited liability company, partnership, sole proprietorship, or associations of these entities.

(5) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

(6) "Quality assurance committee" means a duly appointed committee within a medical practice group that administers a quality assurance program and may be called by another name within the medical practice group, including but not limited to a utilization review, peer review, medical ethics review, professional standards review, quality assurance, or quality improvement committee.

(7) "Quality assurance program" means a comprehensive, ongoing system of mechanisms established by a medical practice group for monitoring and evaluating the quality and appropriateness of the care provided to patients in order to:

(a) identify and take steps to correct any significant problems and trends in the delivery of care; and

(b) take advantage of opportunities to improve care.

(8) (a) "Records" means records of interviews, internal reviews and investigations, and all reports, statements, minutes, memoranda, charts, statistics, and other documentation generated during the activities of a quality assurance program.

(b) The term does not mean original medical records or other records kept relative to any patient in the course of the business of operating as a medical practice group.

History: **En. Sec. 1, Ch. 291, L. 2011.**

37-2-402. Quality assurance program activities. A quality assurance program may include but is not limited to the following activities:

(1) review of pending malpractice claims;

(2) review of quality assurance issues;

(3) identification of areas in need of improvement related to quality and appropriateness of patient care;

(4) promotion and evaluation of best practices;

(5) review and analysis of risk management issues;

(6) oversight of medical event management processes;

(7) prioritization of risk management activities;

(8) tracking of information and of trends identified by data;

(9) investigation of incidents related to quality;

(10) development of risk management strategies, education, and training;

(11) development and implementation of remedial solutions related to quality and appropriateness of patient care for all licensed professionals and other staff affiliated with the medical practice group;

(12) review of information and trends related to claims; and

(13) peer review and oversight of medical practitioners.

History: **En. Sec. 2, Ch. 291, L. 2011.**

37-2-403. Quality assurance committee access to information. (1) It is in the interest of public health and patient medical care that quality assurance committees have access to medical records and other health care information relating to the condition and treatment of the patients of medical practice groups in order to:

(a) evaluate matters relating to the care and treatment of patients for research purposes;

(b) reduce morbidity or mortality; and

(c) obtain statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries.

(2) To carry out these purposes, a medical practice group and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient of the medical practice group to any quality assurance committee of the medical practice group.

History: **En. Sec. 3, Ch. 291, L. 2011.**

37-2-404. Medical practice group quality assurance — confidentiality — exception — liability of members. (1) Except as provided in subsection (6), the proceedings of a quality assurance committee of a medical practice group, the data it produces, and the material it considers:

(a) must be confidential;

(b) may not be considered to be a public record; and

(c) may not be subject to discovery or introduction into evidence in any civil action against a health care facility or an individual employed by or under contract with a health care facility or a medical practice group that results from matters that are the subject of evaluation and review by the quality assurance committee.

(2) A person who was in attendance at a meeting of the quality assurance committee may not be required to testify in any civil action about:

(a) the information and materials produced or presented during the proceedings of the quality assurance committee; or

(b) the findings, recommendations, evaluations, opinions, or other actions of the quality assurance committee or its members.

(3) Information otherwise available is not immune from discovery or use in a civil action merely because the information was presented during proceedings of the quality assurance committee. Nothing in this section may prevent a medical practitioner from using otherwise available information in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges, or employment of the medical practitioner.

(4) A member of the quality assurance committee or a person who provides information orally or in writing to a quality assurance committee may be subpoenaed and required to testify in a civil action regarding events about which the person has knowledge independent of the quality assurance program. The member or person may not be asked:

(a) for impeachment or other purposes, about the information the person provided to the quality assurance committee; or

(b) about any opinions formed as a result of the quality assurance committee proceeding.

(5) All data relating to quality assurance committee activities compiled under this part must be maintained in a confidential location separate from patient medical records.

(6) The governing body of a medical practice group may waive privileges under this section and release information or present data of the quality assurance program by discovery, subpoena, or admission into evidence in any judicial or administrative proceeding. Without waiving privileges under this section, the governing body of a medical practice group may voluntarily release information or present data to a health care facility quality assurance committee established under 50-16-202. The information or records must be subject to the privileges and immunities provided for in 50-16-202.

(7) A duly appointed member of a quality assurance committee who acts without malice or fraud may not be subject to liability for damages in any civil action because of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the quality assurance committee.

History: **En. Sec. 4, Ch. 291, L. 2011.**

37-2-405 through 37-2-408 reserved.

37-2-409. Quality assurance guidelines — reviews — contracts. (1) Reviews of medical practitioners conducted by a quality assurance committee under this part must comply with the following guidelines:

(a) A random review is a review of at least 10 randomly selected patient charts, which must be reviewed by a quality assurance committee. The quality assurance committee may gather data from any source for purposes of the review. The quality assurance committee shall submit an evaluation report to the medical practice group outlining the review findings and recommending changes if changes are determined necessary.

(b) A focused review is a review intended for specific clinical and quality improvement purposes, such as:

(i) reviewing patient medical records relating to a certain disease or procedural category for purposes of comparing documented treatment to available and current standards of medical care;

(ii) assessing the efficacy and efficiency of an office procedure or process related to clinical care; or

(iii) reviewing office and clinical practices prompted by an analysis and results of incident reports.

(c) An incident review is for purposes of gathering data, investigating, conducting analysis, coordinating all responses, and recommending and initiating corrective action, as necessary, connected with a specific incident involving the delivery of medical care to a patient of the medical practice group.

(2) (a) A review of a medical practitioner conducted by a quality assurance committee under this part must be based on appropriateness, medical necessity, adequacy of documentation, and efficiency of services.

(b) The medical practitioner being reviewed must be immediately advised of the findings of the quality assurance committee in order to further the educational process for the physician.

(c) As a result of a review of a medical practitioner conducted under this part, the medical practice group is responsible for documenting:

(i) any corrective action that is taken;

(ii) any policies, procedures, or clinical processes that are changed;

(iii) the person responsible for implementing the changes; and

(iv) how the medical practice group will ensure that the changes are made.

(3) A medical practice group may contract with a group or organization composed of medical practitioners or with a nonprofit corporation engaged in performing the functions of a quality assurance committee for purposes of conducting any review allowed under this part.

History: En. Sec. 5, Ch. 291, L. 2011.

37-2-410. Restrictions on use or publication of information. (1) A quality assurance committee may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment and for research and statistical purposes.

(2) In any report or publication of findings and conclusions of a quality assurance committee, the committee or the members, agents, or employees of the committee may not disclose the name or identity of any patient whose medical records or other protected health information have been studied.

(3) A quality assurance committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any patient of a medical practice group.

History: En. Sec. 6, Ch. 291, L. 2011.

CHAPTER 3
MEDICINE

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Part 1
General

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Approved internship" means an internship training program of at least 1 year in a hospital that is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board may, upon investigation, approve any other internship.

(2) "Approved medical school" means a school that either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) "Approved residency" means a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Medical assistant" means an unlicensed allied health care worker who functions under the supervision of a physician or podiatrist in a physician's or podiatrist's office and who performs administrative and clinical tasks.

(7) "Physician" means a person who holds a degree as a doctor of medicine or doctor of osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

(8) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in

this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of this chapter.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 112, Ch. 483, L. 2001; amd. Sec. 1, Ch. 85, L. 2003; amd. Sec. 3, Ch. 224, L. 2003; amd. Sec. 14, Ch. 109, L. 2009.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if the physician has any established or regularly used hospital connections in this state or maintains or is provided with, for the physician's regular use, an office or other place for rendering the services, the physician must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(g) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(h) the practice of medicine by a physician licensed in another state and employed by the federal government;

(i) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the conditions and limitations defined by law;

(j) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if the physician otherwise engages in the practice of medicine in the state of Montana.

(k) the rendering of services by a physical therapist, technician, medical assistant, as provided in 37-3-104, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(l) the rendering of services by a physician assistant in accordance with Title 37, chapter 20;

(m) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(n) the execution of a death sentence pursuant to 46-19-103;

(o) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(p) the use of an automated external defibrillator pursuant to Title 50, chapter 6, part 5.

(2) Licensees referred to in subsection (1) who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D.", "D.O.", or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted

with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983; amd. Sec. 8, Ch. 97, L. 1989; amd. Sec. 3, Ch. 493, L. 1989; amd. Sec. 25, Ch. 550, L. 1991; amd. Sec. 1, Ch. 335, L. 1999; amd. Sec. 11, Ch. 492, L. 2001; amd. Sec. 2, Ch. 85, L. 2003; amd. Sec. 4, Ch. 224, L. 2003; amd. Sec. 6, Ch. 126, L. 2005; amd. Sec. 4, Ch. 519, L. 2005.

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.
Podiatry, Title 37, ch. 6.
Nursing, Title 37, ch. 8.
Optometry, Title 37, ch. 10.
Physical therapy, Title 37, ch. 11.
Chiropractic, Title 37, ch. 12.
Physician assistant defined, 37-20-401.

37-3-104. Medical assistants — guidelines. (1) The board shall adopt guidelines by administrative rule for:

(a) the performance of administrative and clinical tasks by a medical assistant that are allowed to be delegated by a physician or podiatrist, including the administration of medications; and

(b) the level of physician or podiatrist supervision required for a medical assistant when performing specified administrative and clinical tasks delegated by a physician or podiatrist. However, the board shall adopt a rule requiring onsite supervision of a medical assistant by a physician or podiatrist for invasive procedures, administration of medication, or allergy testing.

(2) The physician or podiatrist who is supervising the medical assistant is responsible for:

(a) ensuring that the medical assistant is competent to perform clinical tasks and meets the requirements of the guidelines;

(b) ensuring that the performance of the clinical tasks by the medical assistant is in accordance with the board's guidelines and good medical practice; and

(c) ensuring minimum educational requirements for the medical assistant.

(3) The board may hold the supervising physician or podiatrist responsible in accordance with 37-1-410 or 37-3-323 for any acts of or omissions by the medical assistant acting in the ordinary course and scope of the assigned duties.

History: En. Sec. 5, Ch. 85, L. 2003.

Part 2
Board of Medical Examiners

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1731.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to provide facilities, 37-1-101.
Board members' compensation and expenses, 37-1-133.
Effect of chemical dependency, 37-3-323.
Approval of class for optometric use of drugs, 37-10-304.
Transfer of funds derived from licensure of physical therapists, 37-11-203.
Power to regulate acupuncture, Title 37, ch. 13, part 2.
Disrupting meeting as disorderly conduct, 45-8-101.

37-3-201. Organization. (1) (a) The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary.

(b) The board shall adopt a seal on which appear the words "The Board of Medical Examiners of Montana" and "Official Seal". The board shall authenticate acts, rules, orders, and licenses by applying the seal.

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-3-203.

History: **En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015; amd. Sec. 1, Ch. 60, L. 2005; amd. Sec. 7, Ch. 126, L. 2005.**

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: **En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.**

37-3-203. Powers and duties. (1) The board may:

(a) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter. The rules must be fair, impartial, and nondiscriminatory.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(e) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(b) The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

(3) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in 50-46-302, for the use of marijuana for a debilitating medical condition provided for in Title 50, chapter 46. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification; and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the use of marijuana for a debilitating medical condition.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the use of marijuana for a debilitating medical condition, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the children, families, health, and human services interim committee by August 1 of each year and shall make a copy of the report available on the board's website.

History: **En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981; amd. Sec. 1, Ch. 283, L. 1987; amd. Sec. 1, Ch. 135, L. 1989; amd. Sec. 1, Ch. 436, L. 1991; amd. Sec. 2,**

Ch. 419, L. 1993; amd. Sec. 5, Ch. 224, L. 2003; amd. Sec. 18, Ch. 467, L. 2005; amd. Sec. 1, Ch. 137, L. 2007; amd. Sec. 1, Ch. 326, L. 2009; amd. Sec. 4, Ch. 122, L. 2011; amd. Sec. 1, Ch. 124, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 122 deleted former (1)(d) that read: "(d) establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness"; inserted (2)(a) regarding medical assistance program; in (2)(b) at beginning deleted "If the board establishes a program pursuant to subsection (1)(d)", in two places before "program" inserted "medical assistance", and in two places before "program" inserted "treatment"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 124 inserted (3) regarding requirement for the board of examiners to report complaints of physician practice related to medical use of marijuana; and made minor changes in style. Amendment effective April 7, 2011.

Pursuant to sec. 38(1), Ch. 419, L. 2011, the Code Commissioner in (3)(a), (3)(a)(v), and (3)(c) substituted "use of marijuana for a debilitating medical condition" for "medical use of marijuana".

Pursuant to sec. 38(2), Ch. 419, L. 2011, the Code Commissioner in (3)(a) substituted "50-46-302" for "50-46-102".

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings that the president considers advisable or necessary.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018; amd. Sec. 12, Ch. 492, L. 2001.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for licenses and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019; amd. Sec. 8, Ch. 126, L. 2005.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

37-3-207 reserved.

37-3-208. Repealed. Sec. 9, Ch. 122, L. 2011.

History: En. Sec. 1, Ch. 271, L. 2007; amd. Sec. 2, Ch. 326, L. 2009.

37-3-209 and 37-3-210 reserved.

37-3-211. Executive secretary. To perform services to the board in connection with the board's duties under this chapter, assist in prosecution and matters of license discipline, and administer the board's affairs, the department shall hire an executive secretary.

History: En. Sec. 2, Ch. 135, L. 1989; amd. Sec. 13, Ch. 492, L. 2001; amd. Sec. 19, Ch. 467, L. 2005.

Part 3
Licensing

Part Cross-References

Oath defined, 1-1-201.
Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
Affidavits, Title 26, ch. 1, part 10.
Surcharge for pretrial review fund, 27-6-206.
Duty of Department to administer and grade examinations, 37-1-101.
Standardized forms, 37-1-104.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Perjury, 45-7-201.
False swearing, 45-7-202.
Nondiscrimination in licensing, 49-3-204.

37-3-301. License required — kinds of licenses. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue four kinds of licenses under the board's seal, which include a physician's license, a specialized license, a temporary license, and a telemedicine license issued in accordance with 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349. The physician's license and the specialized license must be signed by the president, but the temporary license may be signed by any board member. The board shall decide which kind of license to issue.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part); amd. Sec. 1, Ch. 145, L. 1995; amd. Sec. 4, Ch. 492, L. 1997; amd. Sec. 10, Ch. 371, L. 1999; amd. Sec. 9, Ch. 126, L. 2005; amd. Sec. 20, Ch. 467, L. 2005.

37-3-302. Repealed. Sec. 46, Ch. 126, L. 2005.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's license. A physician's license authorizes the holder to perform one or more of the acts embraced in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979; amd. Sec. 3, Ch. 85, L. 2003; amd. Sec. 6, Ch. 224, L. 2003; amd. Sec. 10, Ch. 126, L. 2005.

37-3-304. Practice authorized by temporary license. (1) A temporary license authorizes the holder to perform one or more of the acts listed in 37-3-102(8) in a manner reasonably consistent with the holder's training, skill, and experience, subject to all specifications, conditions, and limitations imposed by the board.

(2) A temporary license may not be issued for a period that exceeds 1 year. However, except as provided in subsection (3), a temporary license may be renewed, at the board's discretion, for additional 1-year periods but may not be renewed more than five times.

(3) A person meeting the requirements of 37-3-305(5) may be granted a limited temporary license for a period of 3 months, which may be extended at the board's discretion upon a showing of good cause for a period not to exceed 3 months.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024; amd. Sec. 4, Ch. 85, L. 2003; amd. Sec. 7, Ch. 224, L. 2003; amd. Sec. 1, Ch. 306, L. 2003; amd. Sec. 11, Ch. 126, L. 2005.

37-3-305. Qualifications for licensure. (1) Except as provided in subsections (4) and (5), a person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has successfully completed an approved residency program of at least 2 years or, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board is at least the equivalent of a 2-year approved residency program;

(d) has submitted a completed application; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has successfully completed an approved residency program of at least 2 years or, for an applicant who graduated from medical school prior to 2000, has had experience or training that in the opinion of the board is at least the equivalent of a 2-year approved residency program; and

(d) is able, in the opinion of the board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state.

(5) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with a program accredited by the accreditation council for graduate medical education or the American osteopathic association;

(c) in the course of an approved rotation of the person's residency program, is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state;

(d) makes application to the department on an approved form; and

(e) pays a fee set by the board, as provided in 37-3-308.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979; amd. Sec. 3, Ch. 419, L. 1993; amd. Sec. 7, Ch. 230, L. 1999; amd. Sec. 2, Ch. 306, L. 2003; amd. Sec. 21, Ch. 467, L. 2005; amd. Sec. 15, Ch. 109, L. 2009.

37-3-306. Physician's license — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's license, license by reciprocity, or license by endorsement only on the basis of:

(a) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school that has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(b) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) An applicant who applies for a license on the basis of an examination and fails the examination may not be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) A holder of the degree of doctor of osteopathy granted in 1955 or before may not be licensed without taking and passing the examination given by the department, subject to 37-1-101. A holder of the degree of doctor of osteopathy granted after 1955 must be licensed in the same manner as provided in this section for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979; amd. Sec. 12, Ch. 126, L. 2005; amd. Sec. 22, Ch. 467, L. 2005; amd. Sec. 16, Ch. 109, L. 2009.

37-3-307. Qualifications for licensure — temporary license. (1) The board may authorize the department to issue to an applicant a temporary license to practice medicine on the basis of:

(a) passing an examination prescribed by the board;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of osteopathic medical examiners or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school that has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or the equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person who has committed unprofessional conduct. The issuance of a temporary license does not impose any future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary license, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3); amd. Sec. 8, Ch. 224, L. 2003; amd. Sec. 13, Ch. 126, L. 2005; amd. Sec. 23, Ch. 467, L. 2005.

37-3-308. Application fee — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee. All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(2) A license tax may not be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981; amd. Sec. 17, Ch. 109, L. 2009.

37-3-309. Application for license. A person desiring a license to practice medicine shall apply to the department on an approved form. The application must be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. The applicant shall provide necessary authorizations for the release of records and information pertinent to the department's inquiry.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983; amd. Sec. 24, Ch. 429, L. 1995; amd. Sec. 14, Ch. 126, L. 2005; amd. Sec. 24, Ch. 467, L. 2005.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in the application the person's correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting the person. A person licensed to practice medicine in this state shall keep the department advised at all times of the person's correct mailing address and of the person's correct name. If the person changes the person's address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department electronically or in writing of the old and new address or of the former name and new name. This information must be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048; amd. Sec. 1357, Ch. 56, L. 2009; amd. Sec. 4, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in third sentence inserted "electronically or". Amendment effective October 1, 2011.

37-3-311. Foreign medical graduate examination. (1) An applicant who is a graduate of a foreign medical school is required to have passed an examination given by the education council for foreign medical graduates or its successor and attained a minimum grade as set by the board.

(2) If an applicant fails to meet the minimum grade requirements on the first examination, the applicant may be reexamined not more than two additional times on each of the component parts of the examination. If an applicant is prevented through no fault of the applicant's from taking a scheduled examination, the applicant may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985; amd. Sec. 25, Ch. 467, L. 2005; amd. Sec. 18, Ch. 109, L. 2009.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Limiting authority to impose renewal fees. A license or renewal fee may not be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981; amd. Sec. 25, Ch. 429, L. 1995; amd. Sec. 5, Ch. 492, L. 1997; amd. Sec. 9, Ch. 224, L. 2003; amd. Sec. 7, Ch. 271, L. 2003; amd. Sec. 26, Ch. 467, L. 2005.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

37-3-315. Qualifications for licensure — specialized license — suspension — practice authorized. (1) A person may not be granted a specialized license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school or college of osteopathic medicine;

(c) is licensed and engaged in the active practice of medicine or osteopathic medicine in another state or foreign country, whose licensing standards are acceptable to the board;

(d) has never been subject to license discipline in any form;

(e) demonstrates evidence of research and publication:

(i) in a peer-reviewed medical journal in the English language;

(ii) in the 2 years preceding receipt of the application; and

(iii) that demonstrate the applicant's competency in the field of medicine in which the specialized license is requested;

(f) has been accepted for privileges in a hospital pending licensure by the board;

(g) has demonstrated to the satisfaction of the board the applicant's knowledge, skills, and abilities by providing evidence of at least one of the following criteria:

(i) at least 3 years' postgraduate clinical training in a formal education program;

(ii) board certification in a specialty recognized or certified by the American board of medical specialties;

(iii) board certification in a specialty recognized or certified by the American osteopathic association; or

(iv) passing, in the 75th percentile or higher, a board-approved state or national examination in medicine, such as the United States medical licensing examination, the comprehensive osteopathic medical licensing examination, the special purpose examination, the comprehensive osteopathic medical variable-purpose examination, an examination given by the educational commission for foreign medical graduates, or the licensing examination of another state or territory of the United States or Canada;

(h) has submitted a completed application file, which has been reviewed by the board, and has made a personal appearance before the board; and

(i) is able to communicate, in the opinion of the board, in the English language. Passing an examination given by the educational commission for foreign medical graduates or the test of English as a foreign language constitutes prima facie evidence of ability to communicate in the English language.

(2) The specialized license is suspended and subject to revocation after a hearing pursuant to the Montana Administrative Procedure Act upon one of the following:

(a) restriction, termination, or other cessation of the licensee's hospital privileges; or

(b) proof of one of the conditions or offenses identified in 37-3-323.

(3) The holder of a specialized license is limited to the practice of medicine specifically approved by the board after consideration of the applicant's training, skill, and experience. All restrictions, specifications, conditions, and limitations imposed by the board must be stated on the specialized license.

History: En. Sec. 2, Ch. 145, L. 1995; amd. Sec. 10, Ch. 224, L. 2003; amd. Sec. 15, Ch. 126, L. 2005.

37-3-316 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that the applicant has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at the applicant's last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after the hearing the board determines that the applicant is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036; amd. Sec. 1358, Ch. 56, L. 2009.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-3-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979; amd. Sec. 1, Ch. 328, L. 1989; amd. Sec. 1, Ch. 164, L. 1991; amd. Sec. 4, Ch. 419, L. 1993; amd. Sec. 11, Ch. 619, L. 1993.

37-3-323. Suspension of license — investigation. (1) The department may investigate whenever the department learns of a reason to suspect that a license applicant or a person having a license to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that the condition incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated the terms of probation.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee or license applicant as part of the examination, and copies must be released to the board on written request.

(3) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proved to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038; amd. Sec. 1, Ch. 321, L. 1989; amd. Sec. 1, Ch. 540, L. 1991; amd. Sec. 5, Ch. 419, L. 1993; amd. Sec. 26, Ch. 429, L. 1995; amd. Sec. 7, Ch. 490, L. 1997; amd. Sec. 16, Ch. 126, L. 2005; amd. Sec. 19, Ch. 109, L. 2009.

Cross-References

Contested cases, Title 2, ch. 4, part 6.
Judicial review of contested cases, Title 2, ch. 4, part 7.
Reporting disciplinary actions against licensees, 37-1-105.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation, except a professional service corporation under Title 35, chapter 4, practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or be imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as the person's own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041; amd. Sec. 1359, Ch. 56, L. 2009.

Cross-References

Criminal justice policy — rights of convicted, Art. II, sec. 28, Mont. Const.
Penalty for unlawful use of physician assistant, 37-20-104.
Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045; amd. Sec. 1360, Ch. 56, L. 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

Cross-References

Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-3-328. Failure to appear or testify. A person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify must be dealt with by the district court from which the subpoena was issued in the same manner and to the same effect as though the subpoena had commanded the person to appear and testify in a cause on trial in that court.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047; amd. Sec. 1361, Ch. 56, L. 2009.

Cross-References

Contempts, Title 3, ch. 1, part 5.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

37-3-329 through 37-3-332 reserved.

37-3-333. Written informed consent for breast cancer treatment. (1) For the purpose of this section, "written informed consent" means an agreement in writing that is freely executed by the patient that certifies that full disclosure has been made to the patient about:

(a) the full range of efficacious medical treatment alternatives that may be viable, including surgical procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other generally accepted medical treatment, or combinations of procedures and treatments;

(b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed in subsection (1)(a); and

(c) aspects of recovery, including the options that are available for reconstructive surgery.

(2) Failure of a physician or surgeon to provide written informed consent as provided in subsection (1) constitutes unprofessional conduct.

History: En. Sec. 3, Ch. 410, L. 1997.

Cross-References

Revocation or suspension for unprofessional conduct, 37-3-323.

37-3-334 through 37-3-340 reserved.

37-3-341. Legislative findings. The Montana legislature previously found, in 37-3-101, that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing patterns of medical practice, medicine is increasingly being practiced by electronic means across state lines. Although access to technological advances is in the public interest, the legislature also finds that regulation of the practice of medicine across state lines is necessary to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who by electronic or other technological means practice medicine for compensation on patients inside Montana are seeking the benefit and protection of the laws of Montana and are subject to the licensure and regulatory requirements provided in 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349.

History: En. Sec. 1, Ch. 371, L. 1999; amd. Sec. 27, Ch. 467, L. 2005.

37-3-342. Definition — scope of practice allowed by telemedicine license. (1) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided directly to a patient in Montana for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative; or

(e) a communication from a physician located outside Montana to a patient in Montana in consultation with a physician or other health care provider licensed to practice medicine in Montana.

History: En. Sec. 2, Ch. 371, L. 1999; amd. Sec. 28, Ch. 467, L. 2005; amd. Sec. 20, Ch. 109, L. 2009.

37-3-343. Practice of telemedicine prohibited without license — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

(2) A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine license pursuant to 37-3-345(2).

(3) A telemedicine license authorizes an out-of-state physician to practice only telemedicine. A telemedicine license does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A telemedicine license may not be used by a physician as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 50, chapter 46, part 3.

(5) A physician who practices telemedicine in this state without a telemedicine license issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, in violation of the terms or conditions of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325.

History: En. Sec. 3, Ch. 371, L. 1999; amd. Sec. 17, Ch. 126, L. 2005; amd. Sec. 29, Ch. 467, L. 2005; amd. Sec. 25, Ch. 419, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 419 inserted (4) relating to use of telemedicine to obtain information relating to registry identification cards for medical use of marijuana; and made minor changes in style. Amendment effective July 1, 2011.

37-3-344. Application for telemedicine license. (1) A person desiring a telemedicine license shall apply to the department and verify the application by oath, in a form prescribed by the board.

(2) The application must be accompanied by:

(a) a license fee prescribed by board rule; and

(b) documents required by the board that establish that the applicant possesses the qualifications prescribed by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in 37-3-349.

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board.

History: En. Sec. 4, Ch. 371, L. 1999; amd. Sec. 18, Ch. 126, L. 2005; amd. Sec. 30, Ch. 467, L. 2005.

37-3-345. Qualifications for telemedicine license — basis for denial. The board may not grant a telemedicine license to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate or license to practice medicine or osteopathic medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical specialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind imposed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine license;

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician licensed to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the board; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana.

History: **En. Sec. 5, Ch. 371, L. 1999; amd. Sec. 11, Ch. 224, L. 2003; amd. Sec. 19, Ch. 126, L. 2005.**

37-3-346. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. Sec. 6, Ch. 371, L. 1999; amd. Sec. 8, Ch. 271, L. 2003.**

37-3-347. Reasons for denial of license — alternative route to licensed practice. (1) The board may deny an application for a telemedicine license if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a license required by 37-3-341 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

(b) plans to use telemedicine as a means to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to Title 50, chapter 46, part 3;

(c) fails to pay a required fee;

(d) does not possess the qualifications or character required by this chapter; or

(e) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine license provided in 37-3-345 may apply for a physician's license in order to practice medicine in Montana.

History: **En. Sec. 7, Ch. 371, L. 1999; amd. Sec. 21, Ch. 126, L. 2005; amd. Sec. 31, Ch. 467, L. 2005; amd. Sec. 26, Ch. 419, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 419 inserted (1)(b) relating to use of telemedicine to obtain information relating to registry identification cards for medical use of marijuana; and made minor changes in style. Amendment effective July 1, 2011.

37-3-348. Discipline of physician with telemedicine license. A physician granted a telemedicine license may be subject to investigation and discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in 37-1-316 or in a board rule; or

(2) failed to:

(a) maintain the qualifications provided in 37-3-345 or in a board rule;

(b) maintain complete, legible patient records in written or readily retrievable electronic form;

(c) make complete, legible patient records available to the board during an investigation or disciplinary proceeding concerning the physician's practice of telemedicine; or

(d) appear and testify at a deposition within the state in the course of an investigation or disciplinary proceeding conducted under Montana law that concerns the physician's practice of telemedicine.

History: **En. Sec. 8, Ch. 371, L. 1999; amd. Sec. 22, Ch. 126, L. 2005.**

37-3-349. Consent to jurisdiction. A physician granted a telemedicine license shall, pursuant to 37-3-344, consent to the jurisdiction of:

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician's practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician's practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel's jurisdiction, as provided in Title 27, chapter 6.

History: **En. Sec. 9, Ch. 371, L. 1999; amd. Sec. 23, Ch. 126, L. 2005.**

Part 4
Reporting Obligations

Part Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the medical assistance program established by the board under 37-3-203, in lieu of reporting directly to the board.

(b) The medical assistance program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to:

(A) comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(B) undergo a reasonable course of recommended treatment, including reasonable aftercare;

(C) satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(ii) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(iii) the medical assistance program personnel are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053; amd. Sec. 6, Ch. 419, L. 1993; amd. Sec. 3, Ch. 326, L. 2009; amd. Sec. 5, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 122 in (2)(a) near end before "program" inserted "medical assistance" and substituted "37-3-203" for "37-3-203(1)(d)"; in (2)(b) before "program" inserted "medical assistance"; in (2)(b)(i)(B) and (2)(b)(i)(C) at beginning deleted "the licensee fails or refuses to"; and made minor changes in style. Amendment effective October 1, 2011.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility that prohibits or limits the privilege of a physician to practice medicine within that facility shall report the action to the state board of medical examiners within 30 days after the action is taken. The report must include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055; amd. Sec. 27, Ch. 429, L. 1995.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: **En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.**

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: **En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.**

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

Parts 5 through 7 reserved

Part 8
Montana Health Corps Act

37-3-801. Short title. This part may be cited as the "Montana Health Corps Act".

History: **En. Sec. 1, Ch. 385, L. 2009.**

37-3-802. Purpose — establishment of program. (1) The purposes of this part are to:

(a) provide primary outpatient care to individuals eligible for medicare or medicaid by retired physicians at affordable prices;

(b) keep the elderly or infirm in their homes longer; and

(c) provide home health care visits for patients who have difficulty in traveling.

(2) The board shall adopt rules to establish the program. The rules must provide procedures for enrolling retired physicians in the health corps and procedures under which physicians or health care facilities may refer medicare or medicaid patients to members of the health corps.

History: **En. Sec. 2, Ch. 385, L. 2009.**

37-3-803. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Health care" has the meaning provided in 50-16-504.

(2) "Health care facility" has the meaning provided in 50-5-101.

History: **En. Sec. 3, Ch. 385, L. 2009.**

37-3-804. Eligibility for participation. A retired physician who is properly licensed and in good standing in Montana may participate in the health corps provided for in this part. The board shall accept applications for participation in the health corps and provide written guidelines to participants in the health corps concerning the provisions of this part and rules adopted to implement this part.

History: **En. Sec. 4, Ch. 385, L. 2009.**

37-3-805. Referral of patients to program — visits — charges. (1) The board shall adopt rules under which physicians or health care facilities may refer medicare or medicaid patients to the health corps program.

(2) A health corps member shall make home visitations to eligible patients for the purpose of providing health care to eligible patients.

(3) A health corps member may charge $10 for a patient contact or visit and may submit a charge to medicare or medicaid.

History: **En. Sec. 5, Ch. 385, L. 2009.**

37-3-806. Limitation on liability. A physician who renders health care within the scope of the physician's license to a patient under this part is not liable to a patient or other person for civil damages resulting from the rendering of the care unless the damages were the result of gross negligence or willful or wanton acts or omissions by the physician. Each patient must be given notice that under state law the physician may not be held legally liable for ordinary negligence for services provided under the health corps program.

History: **En. Sec. 6, Ch. 385, L. 2009.**

37-3-807. Termination of participation in health corps. The board may take disciplinary action against a physician participating in the health corps program as provided in Title 37 and may terminate a physician's participation in the health corps program based upon the disciplinary action.

History: **En. Sec. 7, Ch. 385, L. 2009.**

CHAPTER 4
DENTISTRY AND DENTAL HYGIENE

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Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Denturitry, Title 37, ch. 29.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Dentist to report child abuse, 41-3-201.

Duty of dentist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1732.

(b) "Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(d) "General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(2) Except for the provisions of 37-4-104, a person is practicing dentistry under this chapter if the person:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to the person, any other person, or any agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed, unless the person is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist, as provided in 37-4-104;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", or "oral surgeon", the letters "D.D.S." or "D.M.D.", or any other words, letters, title, or descriptive matter that in any way represents the person as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that the person can perform or will attempt to perform dental operations or render a diagnosis in connection with dental operations; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985; amd. Sec. 1, Ch. 151, L. 1997; amd. Sec. 113, Ch. 483, L. 2001; amd. Sec. 5, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) deleted former definition that read: ""Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia"; inserted definition of deep sedation; in definition of general anesthesia substituted current text for "means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure"; and deleted definition that read: ""General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia.

(ii) The term does not include a nitrous oxide and oxygen mixture or any other anesthetic administered to produce conscious sedation". Amendment effective October 1, 2011.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Except for the provisions in 37-4-104, appending the word "dentist" or the letters "D.D.S.", "D.M.D.", or similar letters to a person's name on a door or a sign, in a printed or published form, or in any other type of advertisement is prima facie evidence that the person is engaged in the practice of dentistry and is subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912; amd. Sec. 2, Ch. 151, L. 1997.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or to a dental surgeon employed by the United States government or to a legally licensed health care practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This chapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. The provisions of this chapter do not apply to a person engaged in the lawful practice of denturitry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental

operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care.

(8) This chapter does not require licensure of the following individuals while engaged in the practice of dentistry, as provided in 37-4-101:

(a) students of an accredited commission on dental accreditation (CODA) dental hygiene program or school who are candidates for a dental hygiene degree and who practice dental hygiene without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a demonstrator or teacher who is a faculty member of an accredited CODA dental hygiene program or school;

(b) students of an accredited CODA program or school who are candidates for a D.D.S. or D.M.D. degree and who practice dentistry without pay in strict conformity with the laws and rules of this state, under the direct personal supervision of a dentist licensed in Montana or a demonstrator or teacher who is a faculty member of a CODA dental program or school; or

(c) dental residents who have received a D.D.S. or D.M.D. degree from a CODA-accredited school and who are engaged in advanced education in dentistry at a dental school, hospital, or public health facility that offers the type of advanced program designed to meet accreditation requirements established by CODA. A dental resident may perform all clinical services within the advanced education program in which the dental resident is enrolled if the services are provided by the sponsoring institution and are authorized by the program supervisor. A dental resident who is not licensed in Montana may not engage in private practice or assess fees for clinical services rendered.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 151, L. 1997; amd. Sec. 8, Ch. 230, L. 1999; amd. Sec. 1, Ch. 67, L. 2003; amd. Sec. 24, Ch. 126, L. 2005.

37-4-104. Twelve-month period for disposition of deceased or disabled dentist's practice by personal representative — restrictions. (1) For the purpose of selling or otherwise disposing of a deceased or a disabled licensee's dental practice and for a period not to exceed 12 months, a person who is not licensed to practice dentistry but who is the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist may contract with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided.

(2) A personal representative may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care;

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care;

(c) allow any person other than a dentist to supervise and control the selection, compensation, terms, conditions, obligations, or privileges of employment or retention of clinical personnel in the dental practice;

(d) determine or limit a fee charged by the dentist or limit the methods of payment accepted by a dentist or the dentist's practice; or

(e) limit or define the scope of services offered by the dentist.

(3) For the purposes of this section:

(a) "clinical" means having a significant relationship, whether real or potential, direct or indirect, to the actual rendering or outcome of dental care, the practice of dentistry, or the quality of dental care being rendered to a patient;

(b) "disabled" has the same meaning as provided for the term "permanently and totally disabled" in 15-30-2110; and

(c) "personal representative" of the estate of a deceased dentist has the same meaning as provided for the term in 72-1-103.

(4) The 12-month period provided for in subsection (1) begins when:

(a) the personal representative of the estate of a deceased dentist files a verified copy of the death certificate of the deceased with the department; or

(b) the personal representative of the disabled dentist files a verified copy of a document signed by a licensed physician that attests to the dentist's disability.

History: En. Sec. 5, Ch. 151, L. 1997.

Part 2
Board of Dentistry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Power of agencies and hearings officer to issue subpoenas, 2-4-104, 2-4-611.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1732.
Preservation of records, Title 22, ch. 3, part 2.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to keep records and provide facilities, 37-1-101.
Licensing investigation and review — record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-4-201. Official seal — organization — subpoena power — screening panel. (1) (a) The board shall adopt an official seal of its own design and shall employ the seal to authenticate the board's acts and records.

(b) The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board.

(c) Any member of the board may administer oaths and affirmations, and the board may hear testimony and subpoena witnesses with respect to matters relating to the duties imposed upon the board by law.

(2) The board shall establish a screening panel for disciplinary matters as provided for in 37-1-307 and shall authorize the screening panel to oversee any rehabilitation program established pursuant to 37-4-311.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903; amd. Sec. 2, Ch. 60, L. 2005.

Cross-References

Oaths, Title 1, ch. 6.

37-4-202. Meetings — notice — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Board proceedings are open to public inspection unless a privacy issue is involved.

(4) Money collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of money received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987; amd. Sec. 15, Ch. 481, L. 1997; amd. Sec. 14, Ch. 492, L. 2001.

37-4-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-4-301. Qualifications — fees. Applicants for licensure shall submit an application that must include, when required:

(1) certification of successful completion of the national board examination;

(2) certification of successful completion of a regional board examination;

(3) three affidavits of good moral character;

(4) a certificate of graduation from a board-approved dental school; and

(5) an application fee.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987; amd. Sec. 12, Ch. 224, L. 2003; amd. Sec. 32, Ch. 467, L. 2005.

37-4-302. Recognition of dental schools and dental hygiene schools. In determining what constitutes a recognized dental college, the board shall be guided by the standards, canons, and practices required for recognition by the commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924; amd. Sec. 1, Ch. 66, L. 1991.

37-4-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

37-4-307. Notice of name and address change — local fees prohibited. (1) Each dentist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983; amd. Sec. 28, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 1997; amd. Sec. 9, Ch. 230, L. 1999; amd. Sec. 9, Ch. 271, L. 2003; amd. Sec. 33, Ch. 467, L. 2005.

37-4-308 through 37-4-310 reserved.

37-4-311. Rehabilitation. The board shall establish a rehabilitation or medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

History: En. Sec. 1, Ch. 358, L. 1997; amd. Sec. 13, Ch. 224, L. 2003; amd. Sec. 6, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 122 substituted "rehabilitation or medical assistance program to assist and rehabilitate licensees" for "protocol for the referral to a board-approved rehabilitation program for licensees"; and made minor changes in style. Amendment effective October 1, 2011.

37-4-312. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensee, professional standards review organization, the Montana dental association or any component society of the association, and any other person may report to the board any information that the licensee, organization, association, society, or person has that appears to show that a licensee is physically or mentally impaired by habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program endorsed by the board under 37-4-311 in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that the program personnel recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare; or

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. Sec. 2, Ch. 358, L. 1997; amd. Sec. 14, Ch. 224, L. 2003.

37-4-313. Compelling licensee evaluation. The board has the right to compel an evaluation of a licensee, after notice to the licensee and a hearing if requested by the licensee, based on information reported pursuant to 37-4-312. The evaluation must be conducted at a facility authorized to conduct evaluations under a program referred to in 37-4-311.

History: En. Sec. 3, Ch. 358, L. 1997.

37-4-314. Immunity of person providing information. A person, organization, association, society, or health care facility that in good faith provides information to the state board of dentistry pursuant to 37-4-312 is not subject to suit for civil damages as a result of providing the information.

History: En. Sec. 4, Ch. 358, L. 1997.

37-4-315 through 37-4-320 reserved.

37-4-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It is not considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated in this section, a card bearing the dentist's name only, together with the dentist's degree or the word "dentist" and giving office location, hours, and telephone numbers. If the dentist limits the dentist's practice to a specialty, the dentist may announce it or the dentist may announce an absence from or a return to practice in the same manner.

(2) A dentist may publish a list of fees, but the listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979; amd. Sec. 1362, Ch. 56, L. 2009.

37-4-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

37-4-324. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who appears by order of the board or any member of the board is entitled to receive, if demanded, for attendance the same fees and mileage allowed by law to a witness in civil cases in the district court. The amount must be paid by the party at whose request the witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, the witness's fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which the witness is entitled for travel to and from the place at which the witness is required to appear and 1 day's attendance. If the witness demands the fees at the time of service and they are not at that time paid or tendered, the witness may not be required to attend before the board, a member of the board, or a referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915; amd. Sec. 1363, Ch. 56, L. 2009.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. A person, company, or association is guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or both if the person, company, or association:

(1) sells, barters, or offers to sell or barter a diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchases or procures by barter a diploma, certificate, or transcript with the intent of using the diploma, certificate, or transcript as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating dental practice;

(3) with fraudulent intent, alter in a material regard a diploma, certificate, or transcript;

(4) use or attempt to use a diploma, certificate, or transcript that has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in the office the required certificate for the current period of licensed practice; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to the board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of the person, company, or association at any time within 60 days prior to the notice, together with a sworn statement showing under and by what license or authority the person, company, or association and the employee are and have been practicing dentistry, but the affidavit may not be used as evidence against the person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918; amd. Sec. 7, Ch. 492, L. 1997.

Cross-References

Willfully defined, 1-1-204.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-4-327. Practicing dentistry without license — penalty. (1) Except as provided in 37-4-101 through 37-4-104 and this section, a person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a license to practice dentistry from the department entitling the person to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined an amount not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, must be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury in excess of the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter must be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987; amd. Sec. 4, Ch. 151, L. 1997; amd. Sec. 25, Ch. 126, L. 2005.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justices' courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: **En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.**

Cross-References

Duties of Attorney General, 2-15-501.
Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Criminal jurisdiction of Justices' Courts, 3-10-303.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

37-4-329 through 37-4-339 reserved.

37-4-340. Volunteer work — licensure — fee waiver — rules. (1) A retired or nonpracticing dentist or dental hygienist may apply for a license to practice dentistry or dental hygiene for the purpose of providing services to indigent or uninsured patients in underserved or critical need areas. An applicant for licensure under this subsection (1) may be required by the board to establish that the applicant is competent to practice before the board grants the applicant a license.

(2) It is not within the scope of a license issued to a dentist or dental hygienist under this section to provide services for remuneration.

(3) If a person is eligible for licensure under the provisions of subsection (1) and the person applies for a license prior to July 1, 2004, the person's renewal fees and late fees accrued since the person's license lapsed are waived. The board may adopt rules providing that renewal fees and late fees or a portion of those fees may be waived for eligible persons applying for licensure under this section after July 1, 2004.

(4) The board may adopt rules setting forth licensing requirements, fees, and other rules necessary to implement any other provisions of this section.

History: **En. Sec. 2, Ch. 67, L. 2003.**

37-4-341. Licensure of out-of-state volunteer dentists and dental hygienists without examination. (1) The board may issue a restricted temporary license to a nonresident dentist or dental hygienist, without examination, to practice in a clinic listed in 37-4-103(6) if the applicant:

(a) has graduated from a dental or dental hygiene program or school accredited by the commission on dental accreditation;

(b) is currently licensed in another state as an actively practicing dentist or dental hygienist; and

(c) is in good standing and does not have a disciplinary action pending in the other state.

(2) A dentist or dental hygienist holding a restricted temporary license under this section:

(a) may not receive monetary or other compensation for providing services; and

(b) may serve only those persons served by the clinics listed in 37-4-103(6).

(3) An application for a restricted temporary license must be submitted on a form approved by the board.

(4) The board shall issue a restricted temporary license within 60 days of receipt of a completed application that demonstrates that the applicant meets the requirements of this section. A temporary restricted license may be renewed annually.

(5) A restricted temporary license is not intended as a means to allow an applicant to practice in this state before a permanent license is granted or as a means to obtain a permanent license when the applicant does not otherwise meet the requirements for permanent licensure.

(6) The board may adopt rules to implement this section, including but not limited to rules to:

(a) establish the scope of practice for a dentist or dental hygienist practicing with a temporary license;

(b) establish a limitation on the number of days a dentist or dental hygienist may practice with a temporary license during any 12-month period; and

(c) set fees for issuance of the license that must be commensurate with costs.

History: En. Sec. 1, Ch. 315, L. 2009.

Part 4
Dental Hygienists and Auxiliary Personnel

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duty of Department to administer and grade examinations, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Exemptions from physician's licensing requirements, 37-3-103.
Practice of healing arts not practice of medicine, 37-3-103(1)(n).
Limitations on administration of general anesthetics, 37-4-511.

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes, and that may be performed under general supervision of a licensed dentist. The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents only under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985; amd. Sec. 2, Ch. 66, L. 1991.

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided by rules adopted under 37-1-319, a person may not engage in the practice of dental hygiene or practice as a dental hygienist in this state until the person has passed an examination approved by the board under rules adopted by the board and has been issued a license by the department.

(3) An applicant for licensure shall submit an application that must include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) a certificate of graduation from a board-approved dental hygiene school; and

(e) an application fee.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985; amd. Sec. 29, Ch. 429, L. 1995; amd. Sec. 15, Ch. 224, L. 2003; amd. Sec. 34, Ch. 467, L. 2005.

37-4-403. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

37-4-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983; amd. Sec. 3, Ch. 66, L. 1991.

37-4-405. Dental hygienist to practice under supervision of licensed dentist — exceptions — definitions. (1) A licensed dental hygienist may:

(a) with the permission of the supervising dentist, practice in the office of a licensed and actively practicing dentist under the general supervision of a licensed dentist; or

(b) provide dental hygiene preventative services in a public health facility under the general supervision of a licensed dentist or, subject to the provisions of subsection (4), under public health supervision.

(2) A dental hygienist may give instruction in oral hygiene without the direct supervision or general supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(3) For the purposes of this section, the following definitions apply:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

(c) "public health facility" means:

(i) federally qualified health centers; federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b; nursing homes; extended care facilities; home health agencies; group homes for the elderly, disabled, and youth; head start programs; migrant worker facilities; local public health clinics and facilities; public institutions under the department of public health and human services; and mobile public health clinics; and

(ii) other public health facilities and programs identified by the board under subsection (6); and

(d) "public health supervision" means the provision of limited dental hygiene preventative services without the prior authorization or presence of a licensed dentist in a public health facility.

(4) (a) A licensed dental hygienist practicing under public health supervision may provide dental hygiene preventative services that include removal of deposits and stains from the surfaces of teeth, the application of topical fluoride, polishing restorations, root planing, placing of sealants, oral cancer screening, exposing radiographs, and charting of services provided.

(b) A licensed dental hygienist practicing under public health supervision may not provide dental hygiene preventative services that include local anesthesia, denture soft lines, temporary restorations, or any other service prohibited under 37-4-401.

(c) A licensed dental hygienist practicing under public health supervision shall provide:

(i) for the referral to a licensed dentist of any patient needing treatment outside the scope of practice authorized for a licensed dental hygienist under this subsection (4); and

(ii) treatment based upon medical and dental health guidelines adopted by rule by the board.

(5) (a) A dental hygienist practicing under public health supervision shall obtain a limited access permit from the board.

(b) The board shall adopt rules:

(i) defining the qualifications necessary to obtain a limited access permit; and

(ii) providing a process for obtaining a limited access permit.

(c) The provision of services under a limited access permit is limited to patients or residents of facilities or programs who, due to age, infirmity, disability, or financial constraints, are unable to receive regular dental care.

(6) The board may identify, by rule, other public health facilities and programs, in addition to those listed in subsection (3)(c), at which services under a limited access permit may be provided.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981; amd. Sec. 4, Ch. 66, L. 1991; amd. Sec. 1, Ch. 172, L. 2003.

37-4-406. Notice of name and address change — local fees prohibited. (1) Each dental hygienist shall give the board notice of any change in name, address, or status within 10 days of the change.

(2) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983; amd. Sec. 30, Ch. 429, L. 1995; amd. Sec. 8, Ch. 492, L. 1997; amd. Sec. 10, Ch. 230, L. 1999; amd. Sec. 10, Ch. 271, L. 2003; amd. Sec. 35, Ch. 467, L. 2005.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel — employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist, except that this section may not be construed to allow the board by rule to permit a licensed dentist to delegate to any auxiliary personnel prophylaxis or any of the duties prohibited to dental hygienists under 37-4-401. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of a licensed dentist.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983; amd. Sec. 5, Ch. 66, L. 1991; amd. Sec. 15, Ch. 492, L. 2001; amd. Sec. 26, Ch. 126, L. 2005.

Part 5
Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms that must contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used, the patient's name must be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of the dentist's license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization, and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3); amd. Sec. 1364, Ch. 56, L. 2009; amd. Sec. 21, Ch. 109, L. 2009.

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations regarding deep sedation or general anesthesia. (1) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under deep sedation or general anesthesia unless the vital signs of the patient are continually monitored by another trained health care professional.

(2) The facility in which deep sedation or general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under deep sedation or general anesthesia, and to treat the complications that may arise from deep sedation or general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985; amd. Sec. 1365, Ch. 56, L. 2009; amd. Sec. 6, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (1) and (2) that read: "(1) A person engaged in the practice of dentistry or oral surgery may not perform any dental or surgical procedure upon another person if a general anesthetic is administered unless the anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) A person engaged in the practice of dentistry or oral surgery may not conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1)"; in (1) substituted "deep sedation or" for "light" and at end substituted "trained health care professional" for "person who has been examined by the board or its agent in life support skills and who has demonstrated a satisfactory level of proficiency as established by the board"; deleted former (4) that read: "(4) A person engaged in the practice of dentistry or oral surgery may not administer a general anesthetic to any other person unless the administering person satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications of general anesthesia. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3)"; in (2) in three places inserted "deep sedation or"; and made minor changes in style. Amendment effective October 1, 2011.

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions — patient histories and examinations. (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: En. Sec. 1, Ch. 313, L. 1987.

CHAPTER 5
OSTEOPATHY
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Board of Osteopathic Physicians
(Repealed)

Part 3 — Licensing
(Repealed)

Part 1
General
(Repealed)

37-5-101. Repealed. Sec. 32, Ch. 224, L. 2003.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981; amd. Sec. 114, Ch. 483, L. 2001.

37-5-102. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Part 2
Board of Osteopathic Physicians
(Repealed)

37-5-201. Repealed. Sec. 6, Ch. 87, L. 1981.

History: En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. Repealed. Sec. 6, Ch. 87, L. 1981.

History: En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part 3
Licensing
(Repealed)

37-5-301. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

37-5-302. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.

37-5-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

37-5-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981; amd. Sec. 31, Ch. 429, L. 1995.

37-5-308 through 37-5-310 reserved.

37-5-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

37-5-312. Repealed. Sec. 32, Ch. 224, L. 2003.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

CHAPTER 6
PODIATRY

Part 1 — General

37-6-101. Definitions.
37-6-102. Scope of practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
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Part 3 — Licensing

37-6-301. License required for practice.
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37-6-303. Repealed.
37-6-304. Designations on license — recording.
37-6-305. Deposit of moneys collected.
37-6-306 through 37-6-309 reserved.
37-6-310. Repealed.
37-6-311. Refusal or revocation of license — investigation.
37-6-312. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Podiatrists to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Duty of podiatrist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of medical examiners provided for in 2-15-1731.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Podiatrist" means a physician or surgeon of the foot and ankle, licensed to diagnose and treat ailments of the human functional foot and ankle.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot and ankle as provided in 37-6-102.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 470, L. 1981; amd. Sec. 1, Ch. 288, L. 1987; amd. Sec. 1, Ch. 484, L. 1989; amd. Sec. 1, Ch. 402, L. 1995; amd. Sec. 115, Ch. 483, L. 2001.

37-6-102. Scope of practice. (1) A podiatrist may diagnose and treat ailments of the human functional foot and ankle by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function. The ankle is the articulation between the talus, tibia, and fibula and their related soft tissue structures.

(2) A podiatrist may not administer any anesthetic other than a local anesthetic.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 2, Ch. 288, L. 1987; amd. Sec. 2, Ch. 484, L. 1989; amd. Sec. 2, Ch. 402, L. 1995.

37-6-103. Application of chapter. This chapter does not apply to any physician licensed to practice the profession in this state or to surgeons of the United States army, navy, or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610; amd. Sec. 1366, Ch. 56, L. 2009.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.
Regulation of prescriptions, Title 37, ch. 7, part 4.
Drug product selection, Title 37, ch. 7, part 5.
Dangerous drugs, Title 45, ch. 9.
Controlled substances, Title 50, ch. 32.

37-6-106. Rulemaking authority. The board may adopt rules to carry out the provisions of this chapter. Rules adopted by the board must be fair, impartial, and nondiscriminatory.

History: En. Sec. 6, Ch. 540, L. 1991.

37-6-107. Certification required for ankle surgery — places of performance of surgery. (1) Notwithstanding any other provisions in this title, a podiatrist may not perform surgical treatments of the ankle unless certified to do so by the board. The board shall certify a podiatrist whom it considers qualified by education, training, and experience or who is certified by the American board of podiatric surgery.

(2) A surgical treatment of the ankle performed in accordance with subsection (1) must be performed in a hospital or outpatient center for surgical services licensed under Title 50.

History: En. Secs. 3, 4, Ch. 402, L. 1995; amd. Sec. 3, Ch. 98, L. 1999.

Part 2
Board of Podiatry Examiners
(Repealed)

37-6-201. Repealed. Sec. 10, Ch. 470, L. 1981.

History: En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
Duty of Department to administer and grade examinations, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-6-301. License required for practice. Except as otherwise provided in this chapter, it is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold out to the public that the person is a podiatrist or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that the person is holding out to the public that the person is a podiatrist or foot correctionist in any manner without first obtaining from the board a license authorizing the practice of podiatry in this state.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 3, Ch. 288, L. 1987; amd. Sec. 1367, Ch. 56, L. 2009.

37-6-302. Qualifications for licensure. (1) A person who wishes to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) A person may not be granted a license to practice podiatry in this state unless the person:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board; and

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners.

(3) The board may waive the requirements described in subsection (2)(d).

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981; amd. Sec. 4, Ch. 288, L. 1987; amd. Sec. 32, Ch. 429, L. 1995; amd. Sec. 7, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2)(f) that read: "(f) has obtained a score of at least 75% on an examination administered by the board"; in (3) after "(2)(d)" deleted "and (2)(f)"; and made minor changes in style. Amendment effective October 1, 2011.

37-6-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981; amd. Sec. 5, Ch. 288, L. 1987; amd. Sec. 33, Ch. 429, L. 1995.

37-6-304. Designations on license — recording. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) The department shall record licenses the same as other medical licenses.

History: En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981; amd. Sec. 6, Ch. 288, L. 1987; amd. Sec. 2, Ch. 540, L. 1991; amd. Sec. 34, Ch. 429, L. 1995; amd. Sec. 9, Ch. 492, L. 1997; amd. Sec. 16, Ch. 224, L. 2003; amd. Sec. 12, Ch. 271, L. 2003; amd. Sec. 36, Ch. 467, L. 2005.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.
Duties of County Clerk, 7-4-2611.
Fees of County Clerk, 7-4-2631.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 288, L. 1987.

37-6-306 through 37-6-309 reserved.

37-6-310. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 288, L. 1987; amd. Sec. 12, Ch. 619, L. 1993.

37-6-311. Refusal or revocation of license — investigation. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

(2) The department may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured the license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and has not later been lawfully declared competent;

(d) has a condition that impairs the licensee's intellect or judgment to the extent that it incapacitates the licensee in the safe performance of professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while the license was suspended or revoked;

(g) has had the license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation must be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request.

(4) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, to be addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until the licensee is discharged as restored to reason or cured and the licensee's professional competence has been proved to the satisfaction of the board.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979; amd. Sec. 7, Ch. 288, L. 1987; amd. Sec. 45, Ch. 83, L. 1989; amd. Sec. 3, Ch. 540, L. 1991; amd. Sec. 35, Ch. 429, L. 1995; amd. Sec. 8, Ch. 490, L. 1997.

Cross-References

Application of contested case procedure to denial of license, 2-4-631.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt rules on conduct, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

CHAPTER 7
PHARMACY

Part 1 — General

37-7-101. Definitions.
37-7-102. Practice subject to regulation.
37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.
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37-7-201. Organization — powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Repealed.
37-7-204. Repealed.

Part 3 — Licensing

37-7-301. Unlawful practice.
37-7-302. Qualifications — display of license.
37-7-303. Repealed.
37-7-304. Repealed.
37-7-305. Repealed.
37-7-306. Clinical pharmacist practitioner qualifications.
37-7-307. Utilization plan — contents — responsibility of pharmacist.
37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing.
37-7-309. Utilization plan approval fee — renewal of approval — renewal fee.
37-7-310 reserved.
37-7-311. Repealed.
37-7-312 through 37-7-320 reserved.
37-7-321. Certified pharmacy license — display.
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37-7-323. Penalty — enforcement.
37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Review—Counseling

37-7-401. Restrictions on prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Repealed.
37-7-404. Repealed.
37-7-405. Repealed.
37-7-406. Standards for prospective drug utilization review and patient counseling.
37-7-407. Penalty.

Part 5 — Drug Product Selection

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37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted — limitation.
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Part 6 — Wholesale Drug Distributors—Licensing

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37-7-602. Definitions.
37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty.
37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance.
37-7-605. Out-of-state wholesale drug distributor licensing requirements.
37-7-606. Licenses.
37-7-607. Repealed.
37-7-608. Repealed.
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37-7-710. Repealed.
37-7-711. Penalty.
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Part 15 — Prescription Drug Registry

37-7-1501. Short title.
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37-7-1512. Rulemaking authority.
37-7-1513. Unlawful acts — sanctions — civil penalties.
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Chapter Cross-References

Professional service corporations, Title 35, ch. 4.
General provisions relating to health care practitioners, Title 37, ch. 2.
Use of diagnostic drugs by optometrist not prohibited, 37-10-103.
Dangerous drugs, Title 45, ch. 9.
Controlled substances, Title 50, ch. 32.

Part 1
General

37-7-101. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) Except as provided in 37-7-105, the term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Cancer drug" means a prescription drug used to treat:

(a) cancer or its side effects; or

(b) the side effects of a prescription drug used to treat cancer or its side effects.

(4) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(5) "Clinical pharmacist practitioner" means a licensed pharmacist in good standing who meets the requirements specified in 37-7-306.

(6) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(7) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(8) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(10) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(11) "Controlled substance" means a substance designated in Schedules II through V of Title 50, chapter 32, part 2.

(12) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(13) "Device" has the same meaning as defined in 37-2-101.

(14) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(15) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(16) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (16)(a), (16)(b), or (16)(c).

(17) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(18) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(19) "Health care facility" has the meaning provided in 50-5-101.

(20) (a) "Health clinic" means a facility in which advice, counseling, diagnosis, treatment, surgery, care, or services relating to preserving or maintaining health are provided on an outpatient basis for a period of less than 24 consecutive hours to a person not residing at or confined to the facility.

(b) The term includes an outpatient center for primary care and an outpatient center for surgical services, as those terms are defined in 50-5-101, and a local public health agency as defined in 50-1-101.

(c) The term does not include a facility that provides routine health screenings, health education, or immunizations.

(21) "Hospital" has the meaning provided in 50-5-101.

(22) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(23) "Long-term care facility" has the meaning provided in 50-5-101.

(24) (a) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(25) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(26) "Participant" means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the cancer drug repository program provided for in 37-7-1403 and that accepts donated cancer drugs or devices under rules adopted by the board.

(27) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(28) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(29) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(30) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(31) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(32) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(33) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(34) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(35) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(36) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(37) "Prescriber" has the same meaning as provided in 37-7-502.

(38) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 353.

(39) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(40) "Provisional community pharmacy" means a pharmacy that has been approved by the board, including but not limited to federally qualified health centers, as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(41) "Qualified patient" means a person who is uninsured, indigent, or has insufficient funds to obtain needed prescription drugs or cancer drugs.

(42) "Registry" means the prescription drug registry provided for in 37-7-1502.

(43) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(44) "Wholesale" means a sale for the purpose of resale.

History: **En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 219, L. 1991; amd. Sec. 36, Ch. 429, L. 1995; amd. Sec. 3, Ch. 388, L. 2001; amd. Sec. 116, Ch. 483, L. 2001; amd. Sec. 1, Ch. 293, L. 2009; amd. Sec. 4, Ch. 299, L. 2009; amd. Sec. 1, Ch. 119, L. 2011; amd. Sec. 2, Ch. 241, L. 2011.**

Compiler's Comments

2011 Amendments — Composite Section: Chapter 119 in definition of administer in (b) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 241 inserted definitions of controlled substance and registry; and made minor changes in style. Amendment effective July 1, 2011.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: **En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).**

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged contraceptives, other than mifepristone, if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525; amd. Sec. 2, Ch. 472, L. 1989; amd. Sec. 59, Ch. 418, L. 1995; amd. Sec. 88, Ch. 546, L. 1995; amd. Sec. 7, Ch. 60, L. 2003; amd. Sec. 2, Ch. 125, L. 2007.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.
Licensing of dentists, Title 37, ch. 4, part 3.
Licensing — veterinary medicine, Title 37, ch. 18, part 3.
Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter must be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979; amd. Sec. 37, Ch. 467, L. 2005.

Cross-References

Duties of Department, 37-1-101.

37-7-105. Administration of influenza vaccine. A pharmacist may administer immunization against the influenza virus by injection or inhalation for individuals who are 12 years of age or older.

History: En. Sec. 2, Ch. 119, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 2
Board of Pharmacy

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1733.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) in concurrence with the board of medical examiners, defining the additional education, experience, or certification required of a licensed pharmacist to become a certified clinical pharmacist practitioner;

(f) issuing certificates of "certified pharmacy" under this chapter;

(g) establishing and collecting license and registration fees;

(h) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(h) may not be construed to expand on the definition of the practice of pharmacy.

(i) establishing a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

(j) making rules for the conduct of its business;

(k) performing other duties and exercising other powers as this chapter requires;

(l) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981; amd. Sec. 1, Ch. 134, L. 1991; amd. Sec. 4, Ch. 388, L. 2001; amd. Sec. 3, Ch. 293, L. 2009; amd. Sec. 7, Ch. 122, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 122 inserted (2)(i) requiring the establishment of a medical assistance program; and made minor changes in style. Amendment effective October 1, 2011.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

37-7-204. Repealed. Sec. 24, Ch. 100, L. 2011.

History: En. Sec. 1, Ch. 307, L. 1993.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of Boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.
License not required for sale of pesticides, 80-8-207.

37-7-301. Unlawful practice. Except as provided in 37-7-307 through 37-7-309, it is unlawful for a person to:

(1) engage in the practice of pharmacy unless licensed by the board; or

(2) assist in the practice of pharmacy unless registered by the board as a pharmacy technician.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971;

R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981; amd. Sec. 2, Ch. 219, L. 1991; amd. Sec. 5, Ch. 388, L. 2001.

37-7-302. Qualifications — display of license. (1) To be entitled to examination as a pharmacist, the applicant must be of good moral character and must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or have received an accredited pharmacy degree that has been approved by the board. However, an applicant may not receive a registered pharmacist's license until the applicant has complied with the internship requirements established by the board.

(2) Each person licensed and registered under this chapter must receive from the department an appropriate license. The license must be conspicuously displayed at all times in the place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983; amd. Sec. 37, Ch. 429, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 38, Ch. 467, L. 2005.

37-7-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981; amd. Sec. 38, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 1997; amd. Sec. 6, Ch. 388, L. 2001; amd. Sec. 13, Ch. 271, L. 2003.

37-7-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

37-7-306. Clinical pharmacist practitioner qualifications. (1) A clinical pharmacist practitioner is a licensed pharmacist in good standing who:

(a) is certified by the board, in concurrence with the board of medical examiners, to provide drug therapy management, including initiating, modifying, or discontinuing therapies, identifying and managing drug-related problems, or ordering tests under the direction or supervision of a prescriber;

(b) has additional education, experience, or certification as required by the board in concurrence with the board of medical examiners; and

(c) has in place a collaborative pharmacy practice agreement.

(2) Only a pharmacist certified by the board may legally be identified as a clinical pharmacist practitioner.

History: En. Sec. 2, Ch. 293, L. 2009.

37-7-307. Utilization plan — contents — responsibility of pharmacist. (1) A utilization plan must set forth:

(a) the name and qualifications of the supervising pharmacist or pharmacists;

(b) the nature and location of the supervising pharmacist's pharmacy practice;

(c) a summary of the tasks delegated by the pharmacist and the methods by which a supervising pharmacist may verify and document the tasks. "Verify" means the personal confirmation by a supervising pharmacist of the correctness of the tasks undertaken by the pharmacy technician.

(d) any other information the board considers relevant.

(2) The board shall approve a utilization plan if it determines that the duties to be delegated are:

(a) assigned, verified, and documented by the supervising pharmacist; and

(b) within the scope of the training and competence of the person to whom the authority is delegated.

(3) A supervising pharmacist is responsible for the actions of a pharmacy technician or auxiliary who performs services for the pharmacist under the terms of a utilization plan.

History: En. Sec. 3, Ch. 219, L. 1991.

37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing. (1) A supervising pharmacist shall:

(a) prepare the utilization plan and submit a summary of the plan to the board for approval;

(b) keep on file in the pharmacy a copy of the utilization plan for inspection by the board; and

(c) annually review the utilization plan and provide documentation to the board that the plan accurately reflects the current use of the services of a pharmacy technician or auxiliary.

(2) The board shall refuse to approve or shall revoke or fail to renew approval of a utilization plan if it does not conform to the provisions of 37-7-307 through 37-7-309 and rules adopted under those sections.

(3) One year after the board revokes approval of a utilization plan, the supervising pharmacist may reapply for approval by complying with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections.

(4) Before refusing to approve or before revoking or failing to renew approval of a utilization plan, the board shall provide the supervising pharmacist a reasonable time in which to supply additional information demonstrating compliance with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections and the opportunity to request a hearing.

(5) If a supervising pharmacist requests a hearing, the board shall conduct the hearing in accordance with the contested case procedures in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 219, L. 1991.

37-7-309. Utilization plan approval fee — renewal of approval — renewal fee. (1) A pharmacy in which a pharmacist uses the services of a pharmacy technician or auxiliary under an approved utilization plan shall pay to the board a utilization plan approval fee in an amount set by the board as provided in 37-1-134. Payment must be made when the utilization plan is submitted and is not refundable.

(2) Approval of a utilization plan expires 1 year from the date of approval. The board shall grant renewal of approval upon payment of a renewal fee in an amount set by the board and documentation as required by 37-7-308(1)(c).

(3) The board may adopt fees, as provided in 37-1-134, for other costs associated with implementation of 37-7-307 through 37-7-309, including the costs of onsite inspection of the utilization plan at the participating pharmacy.

(4) The board shall deposit fees received in the state special revenue fund for use by the board in administration of 37-7-307 through 37-7-309, subject to 37-1-101(6).

History: En. Sec. 5, Ch. 219, L. 1991.

37-7-310 reserved.

37-7-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license — display. The board shall provide for the original certification and renewal by the board of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board, on application on a prescribed form, and on the payment of an original certification fee prescribed by the board, the board shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The license must be displayed in a conspicuous place in the pharmacy for which it is issued. A person may not operate a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981; amd. Sec. 5, Ch. 247, L. 1983; amd. Sec. 39, Ch. 429, L. 1995; amd. Sec. 11, Ch. 492, L. 1997; amd. Sec. 7, Ch. 388, L. 2001; amd. Sec. 39, Ch. 467, L. 2005.

37-7-322. Use of words pharmacy, apothecary, drug store, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part of the business the words "pharmacy", "apothecary", "drug store", or "chemist shop" or any abbreviation, translation, extension, or variation of those terms or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by the term, abbreviation, translation, extension, or variation unless the business conducted is a pharmacy within the meaning of this chapter and licensed and in the charge of a licensed pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522; amd. Sec. 8, Ch. 388, L. 2001.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

37-7-323. Penalty — enforcement. (1) A person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter is guilty of a misdemeanor and upon conviction for each violation shall automatically lose any license issued by the board.

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2).

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526; amd. Sec. 6, Ch. 219, L. 1991; amd. Sec. 9, Ch. 388, L. 2001.

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.
Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.
Misdemeanor penalty when none specified, 46-18-212.
Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter, except those paid to a justice's court, and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 23, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4

Prescriptions Regulated — Review — Counseling

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.
Dangerous drugs, Title 45, ch. 9.
Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions on prescriptions. (1) An authorized prescriber may not sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that the prescription can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled

for more than 1 year from the date the prescription was originally written. A Schedule II prescription may not be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981; amd. Sec. 17, Ch. 97, L. 1989; amd. Sec. 2, Ch. 444, L. 1989; amd. Sec. 10, Ch. 388, L. 2001; amd. Sec. 27, Ch. 126, L. 2005.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.

37-7-406. Standards for prospective drug utilization review and patient counseling. (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or the patient's representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse.

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in the pharmacist's professional judgment, the pharmacist considers significant to the patient's safe and proper use of the prescribed drug. The patient counseling should encompass the topics set forth in 42 U.S.C. 1396r-8 of the Social Security Act and administrative rules established by the board.

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug.

History: En. Sec. 1, Ch. 664, L. 1991; amd. Sec. 11, Ch. 388, L. 2001.

37-7-407. Penalty. In addition to all other penalties provided by law, a person violating 37-7-406 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

Part 5
Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of an official compendium recognized by the board.

(7) "Person" has the same meaning as provided in 37-7-101.

(8) "Prescriber" means a medical practitioner, as defined in 37-2-101, licensed under the professional laws of the state to administer and prescribe medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of an official compendium recognized by the board.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981; amd. Sec. 12, Ch. 388, L. 2001.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) and unless instructed otherwise by the purchaser, the pharmacist who receives a prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, strength, quantity, dose, and dosage form as the prescribed drug that is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530; amd. Sec. 13, Ch. 388, L. 2001.

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product, as provided in 37-7-505, shall notify the person presenting the prescription that the person may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product that is equivalent to the one

prescribed by your physician unless you or your physician request otherwise." The printing on the sign must be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531; amd. Sec. 1368, Ch. 56, L. 2009.

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than the pharmacist would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534; amd. Sec. 1369, Ch. 56, L. 2009.

Cross-References

Availability of remedies — liability, Title 27, ch. 1.
Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;
(b) a short and plain statement of the matters asserted as charged;
(c) a statement of the amount of the penalty or penalties imposed; and
(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.
Contested case procedure, Title 2, ch. 4, part 6.
Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Part 6
Wholesale Drug Distributors — Licensing

37-7-601. Scope and purpose. This part applies to a person or entity engaged in the wholesale distribution of prescription drugs in this state. The purpose of this part is to implement the federal Prescription Drug Marketing Act of 1987 by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in wholesale distributions of prescription drugs.

History: En. Sec. 2, Ch. 134, L. 1991.

37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.

(5) "Prescription drug" has the same meaning as provided in 37-7-101.

(6) (a) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

History: En. Sec. 3, Ch. 134, L. 1991; amd. Sec. 14, Ch. 388, L. 2001; amd. Sec. 73, Ch. 114, L. 2003.

37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty. (1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under this part.

(2) Licensed wholesale drug distributors other than pharmacies may not dispense or distribute prescription drugs directly to patients.

(3) A person who violates the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1991.

37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance. (1) A person or distribution outlet may not act as a wholesale drug distributor without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) In order to obtain and maintain a wholesale drug distributorship in this state, an applicant shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution as defined in 37-7-602 for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and retaining a license, pertaining to each wholesale drug distributor to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that assures preparation by the wholesale drug distributor for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to wholesale drug distribution.

(5) An agent or employee of a licensed wholesale drug distributor need not be licensed as a wholesale drug distributor.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. If a conflict arises between a food and drug administration guideline and a rule or regulation of the board, the former controls.

History: En. Sec. 5, Ch. 134, L. 1991.

37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) An out-of-state wholesale drug distributor may not conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on an approved form.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license.

History: En. Sec. 6, Ch. 134, L. 1991; amd. Sec. 40, Ch. 467, L. 2005.

37-7-606. Licenses. The license for wholesale drug distributors is effective during the period specified by department rule.

History: En. Sec. 7, Ch. 134, L. 1991; amd. Sec. 40, Ch. 429, L. 1995; amd. Sec. 12, Ch. 492, L. 1997; amd. Sec. 41, Ch. 467, L. 2005.

37-7-607. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 134, L. 1991.

37-7-608. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 134, L. 1991.

37-7-609. Board access to wholesale drug records. Wholesale drug distributors may keep records at a central location apart from the principal office of the wholesale drug distributor or the location where the drugs are stored and from where they are shipped, provided that the records must be available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.

History: En. Sec. 10, Ch. 134, L. 1991.

37-7-610. Rulemaking authority. The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of this part. If the rules and regulations conflict with the wholesale drug distribution guidelines promulgated by the United States food and drug administration, the latter control.

History: En. Sec. 11, Ch. 134, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7
Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration. The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and use of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be registered with the board, shall disclose specific information about their services, shall meet the same standards for utilization of technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence.

History: En. Sec. 2, Ch. 664, L. 1991; amd. Sec. 2, Ch. 300, L. 1993; amd. Sec. 2, Ch. 274, L. 1995.

37-7-702. Out-of-state mail service pharmacy defined. "Out-of-state mail service pharmacy" means a pharmacy located outside this state that:

(1) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(2) provides to a resident of this state information on drugs or devices that may include but is not limited to advice relating to therapeutic values, potential hazards, and uses; or

(3) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

History: En. Sec. 3, Ch. 664, L. 1991.

37-7-703. Registration requirements. Each out-of-state mail service pharmacy must be registered with the board of pharmacy. In order to be registered with the board to do business in this state and for the renewal of its registration, an out-of-state mail service pharmacy:

(1) (a) shall submit a certificate from the appropriate licensing authority with which it is currently licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has complied;

(2) shall register with the board and provide information on ownership and location, including the names and titles of the corporate officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. If the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for determining the number of pharmacy technicians or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall submit to the board proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and the pharmacist's written commitment to comply with the utilization plan, if any, for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board; and

(5) shall pay an initial registration fee and a periodic renewal fee in an amount to be determined by the board and at a time established by the department by rule.

History: En. Sec. 4, Ch. 664, L. 1991; amd. Sec. 3, Ch. 300, L. 1993; amd. Sec. 3, Ch. 274, L. 1995; amd. Sec. 13, Ch. 492, L. 1997.

37-7-704. Inspections. If the licensing or regulatory agency of the state in which an out-of-state mail service pharmacy is domiciled fails or refuses to inspect the out-of-state mail service pharmacy after receiving a request for an inspection from the board of this state, the board may cancel the out-of-state pharmacy's right to do business in this state unless the out-of-state pharmacy agrees to an onsite inspection by the board of this state.

History: En. Sec. 5, Ch. 664, L. 1991.

37-7-705. Product selection of prescribed drugs — notification. (1) An out-of-state mail service pharmacy may not substitute a prescription drug unless the substitution is made in compliance with the laws of this state and the rules and regulations of the board.

(2) An out-of-state mail service pharmacy may not dispense a substitute drug product to a resident of this state without notifying the patient of the substitution either by telephone or in writing.

History: En. Sec. 6, Ch. 664, L. 1991.

37-7-706. Patient communication — telephone service. Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under this part, between patients in this state and a pharmacist who has access to the patients' records at the out-of-state mail service pharmacy. The toll-free telephone number must be affixed to all drug product containers dispensed to patients in this state.

History: En. Sec. 7, Ch. 664, L. 1991.

37-7-707 through 37-7-709 reserved.

37-7-710. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 300, L. 1993.

37-7-711. Penalty. In addition to all other penalties provided by law, a person violating 37-7-703 through 37-7-706 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

37-7-712. Rulemaking authority. The board of pharmacy may adopt rules to implement this part.

History: En. Sec. 4, Ch. 274, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Parts 8 through 10 reserved

Part 11

Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

37-7-1101. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

History: En. Sec. 1, Ch. 235, L. 1987.

Parts 12 and 13 reserved

Part 14

Donated Drugs and Devices Program

37-7-1401. Programs for donation of unused prescription drugs, cancer drugs, and devices — rulemaking required. (1) The board of pharmacy shall, in consultation and cooperation with the department of public health and human services, create a program for the donation of prescription drugs collected from long-term care facilities to qualified patients.

(2) For the purposes of the program created pursuant to subsection (1), prescription drugs, except those drugs defined as a dangerous drug in 50-32-101 or a drug designated as a precursor to a controlled substance in 50-32-401, unneeded by a resident or former resident of a long-term care facility may be donated by the long-term care facility to a provisional community pharmacy that provides or may provide prescription drugs to individuals who are qualified patients for transfer free of charge or at a reduced charge to those individuals.

(3) This section does not amend or otherwise change the law applicable to the prescribing of prescription drugs, the sale of those drugs, or the licensing of long-term care facilities or pharmacies.

(4) The board of pharmacy shall adopt rules to implement this part. The rules must address:

(a) the collection, receipt, and storage of donated drugs and devices;

(b) the transfer of prescription drugs donated by a long-term care facility to provisional community pharmacies;

(c) which pharmacies may be considered provisional community pharmacies that may sell or give the prescription drugs donated by long-term care facilities to others;

(d) eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs or devices;

(e) the forms needed for the administration of the donated drug programs;

(f) categories of cancer drugs and devices that the cancer drug repository program will accept for dispensing and categories it will not accept, including the reason that a cancer drug or device will not be accepted;

(g) the price for which the prescription drugs donated by a long-term care facility may be sold; and

(h) the maximum handling fee that may be charged by participants that accept and distribute or dispense a cancer drug or device.

(5) In adopting the rules, the board of pharmacy shall consider the ability of persons to pay for the drugs and the existence and operation of similar programs in other states.

History: En. Sec. 1, Ch. 362, L. 2001; amd. Sec. 5, Ch. 299, L. 2009.

37-7-1402. Identifying information to be deleted from donated drugs or devices. A person or entity donating a prescription drug, a cancer drug, or a device pursuant to the programs created under this part shall delete from the container in which the drug or device is held any information by which the person for whom the drug or device was prescribed may be identified.

History: En. Sec. 2, Ch. 362, L. 2001; amd. Sec. 6, Ch. 299, L. 2009.

37-7-1403. Cancer drug repository program — donations — registry. (1) The board shall establish a cancer drug repository program for accepting donated cancer drugs and devices and dispensing the drugs and devices to qualified patients. Participation in the program is voluntary.

(2) Any person or entity, including but not limited to a health care facility or the manufacturer of a cancer drug or device, may donate cancer drugs or devices to a participant pursuant to the provisions of 37-7-1403 through 37-7-1405.

(3) The board shall establish and maintain a registry of participants in the cancer drug repository program. The participant registry must:

(a) include the participant's name, address, and telephone number; and

(b) identify whether the participant is a physician's office, pharmacy, hospital, or health clinic.

(4) The board shall make the participant registry available to a person or entity wishing to donate a cancer drug or device to the cancer drug repository program.

History: En. Sec. 1, Ch. 299, L. 2009.

37-7-1404. Cancer drugs or devices accepted or dispensed — conditions. (1) (a) Unless otherwise prohibited by law, a cancer drug or device may be accepted or dispensed under the cancer drug repository program established under 37-7-1403 if the drug or device is in its original, unopened, sealed, and tamper-evident unit dose packaging.

(b) A cancer drug packaged in single-unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit dose packaging is unopened.

(2) A cancer drug may not be accepted or dispensed under this section if the drug:

(a) bears an expiration date that is earlier than 6 months after the date the drug was donated;

(b) is considered adulterated or misbranded under the provisions of Title 50, chapter 31, part 3; or

(c) is subject to restricted distribution pursuant to 21 CFR 314.520.

(3) Subject to the limitations provided in this section, an unused cancer drug or device dispensed under the medicaid program provided for in Title 53, chapter 6, may be accepted and dispensed under the cancer drug repository program.

(4) A cancer drug or device donated under this program must be stored:

(a) separately from other prescription drugs or stock;

(b) according to the manufacturer's recommended storage conditions; and

(c) in the compounding or dispensing area if stored in a pharmacy.

(5) In dispensing a donated cancer drug or device, a participant shall give first priority to a qualified patient in the participant's service area. Other cancer patients may receive donated cancer drugs or devices if a qualified patient is not available.

(6) A participant shall notify a patient if the patient is receiving a cancer drug or device that has been donated.

History: En. Sec. 2, Ch. 299, L. 2009.

37-7-1405. Participants — duties — fee authorized. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of a donated cancer drug or device and shall inspect all donated drugs and devices before dispensing them to determine if they are adulterated or misbranded.

(2) A cancer drug or device may be:

(a) dispensed only pursuant to a prescription issued by a prescriber authorized to prescribe cancer drugs or devices; or

(b) distributed to another participant for dispensing.

(3) A cancer drug or device donated to the cancer drug repository program may not be resold.

(4) A participant may charge a handling fee for distributing or dispensing a cancer drug or device.

(5) A participant shall maintain records of donated drugs and devices and the distribution of the drugs and devices.

(6) (a) For cancer drugs or devices that are donated to the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:

(i) the date the participant received the cancer drug or device;
(ii) the drug name, strength, and amount;
(iii) the prescription number;
(iv) the expiration date of the drug;
(v) the manufacturer's name and lot number; and
(vi) the name and address of the person or entity donating the drug.

(b) For cancer drugs or devices that are distributed or dispensed by the participant, records maintained pursuant to subsection (5) must include but are not limited to the following information:

(i) the name and address of the receiving person or entity;
(ii) the name, strength, and quantity of the drug;
(iii) the dosage form, if applicable;
(iv) the name and address of the participant who distributed or dispensed the drug or device;
(v) the date the participant distributed or dispensed the drug or device;
(vi) the manufacturer's name and lot number; and
(vii) the expiration date of the drug.

History: En. Sec. 3, Ch. 299, L. 2009.

37-7-1406 and 37-7-1407 reserved.

37-7-1408. Donated drugs and devices — immunity. (1) A resident or former resident of a long-term care facility and the long-term care facility donating a prescription drug, a cancer drug, or a device as part of the programs created pursuant to this part are not liable for simple negligence in the donation of a drug or device if the requirements of this part and the rules implementing this part have been complied with.

(2) Except as provided in subsection (3):

(a) a person or entity, including the manufacturer of a cancer drug or device that exercises reasonable care in donating, accepting, distributing, or dispensing a cancer drug or device under the provisions of 37-7-1403 through 37-7-1405 and rules adopted by the board, is immune from civil or criminal liability or professional disciplinary action of any kind for an injury, death, or loss to a person or property relating to the accepting, distributing, or dispensing of the cancer drug or device;

(b) a person or entity, unless directly negligent, is not liable for the negligence or lack of care of other persons or entities and is entitled to the immunity of this part.

(3) (a) The donation of a cancer drug or device by the manufacturer of the drug or device does not absolve the manufacturer from criminal or civil liability or increase a liability that would have existed had the drug or device not been donated.

(b) The civil immunity provisions of subsection (2) do not apply to a person employed by or an entity operated by the state or a political subdivision of the state.

History: En. Sec. 3, Ch. 362, L. 2001; amd. Sec. 7, Ch. 299, L. 2009.

Part 15
Prescription Drug Registry

Part Compiler's Comments

Effective Date: Section 19, Ch. 241, L. 2011, provided that this part is effective July 1, 2011.

37-7-1501. Short title. This part may be cited as the "Montana Patient Safety Act".

History: En. Sec. 1, Ch. 241, L. 2011.

37-7-1502. Prescription drug registry — purpose. (1) The board shall establish and maintain a prescription drug registry for the purpose of improving patient safety by:

(a) making a list of controlled substances prescribed to a patient available to the patient or to the patient's health care provider; and

(b) allowing authorized staff of the board who have signed appropriate confidentiality agreements to review the registry for possible misuse and diversion of controlled substances.

(2) The board shall electronically collect information on prescription drug orders involving controlled substances pursuant to 37-7-1503 and shall disseminate information as provided in 37-7-1504 through 37-7-1506.

History: En. Sec. 3, Ch. 241, L. 2011.

37-7-1503. Prescription drug registry — reporting requirements. (1) Except as provided in subsection (2), each entity licensed by the board as a certified pharmacy or as an out-of-state mail order pharmacy that dispenses drugs to patients in Montana shall provide prescription drug order information for controlled substances to the registry by:

(a) electronically transmitting the information in a format established by the board unless the board has granted a waiver allowing the information to be submitted in a nonelectronic manner; and

(b) submitting the information in accordance with time limits set by the board unless the board grants an extension because:

(i) the pharmacy has suffered a mechanical or electronic failure or cannot meet the deadline for other reasons beyond its control; or

(ii) the board is unable to receive electronic submissions.

(2) This section does not apply to:

(a) a prescriber who dispenses or administers drugs to the prescriber's patients; or

(b) a prescription drug order for a controlled substance dispensed to a person who is hospitalized.

History: En. Sec. 4, Ch. 241, L. 2011.

37-7-1504. Prescription drug registry review. The board may review the information in the registry for possible misuse and diversion of controlled substances prescribed and dispensed to a patient. The board may provide information about possible misuse or diversion to prescribers and dispensers as allowed by rule.

History: En. Sec. 5, Ch. 241, L. 2011.

37-7-1505. Confidentiality. Patient information that is collected, recorded, transmitted, and stored for the registry is protected and may not be disclosed except as allowed in 37-7-1506. The board shall adopt rules to protect the confidentiality of the registry and to ensure that only authorized individuals have access to the registry.

History: En. Sec. 6, Ch. 241, L. 2011.

37-7-1506. Providing prescription drug registry information. (1) Registry information is health care information as defined in 50-16-504 and is confidential. Except as provided in 37-7-1504, the board is authorized to provide data from the registry, upon request, only to the following:

(a) a person authorized to prescribe or dispense prescription drugs if the person certifies that the information is needed to provide medical or pharmaceutical treatment to a patient who is the subject of the request and who is under the person's care or has been referred to the person for care;

(b) a prescriber who requests information relating to the prescriber's own prescribing information if the prescriber certifies that the requested information is for a purpose in accordance with board rule;

(c) an individual requesting the individual's registry information if the individual provides evidence satisfactory to the board that the individual requesting the information is the person about whom the data entry was made;

(d) a designated representative of a government agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense drugs, in order to conduct investigations related to a health care professional who is the subject of an active investigation for drug misuse or diversion;

(e) a county coroner or a peace officer employed by a federal, state, tribal, or local law enforcement agency if the county coroner or peace officer has obtained an investigative subpoena;

(f) an authorized individual under the direction of the department of public health and human services for the purpose of reviewing and enforcing that department's responsibilities under the public health, medicare, or medicaid laws; or

(g) a prescription drug registry in another state if the data is subject to limitations and restrictions similar to those provided in 37-7-1502 through 37-7-1513.

(2) The board shall maintain a record of each individual or entity that requests information from the registry and whether the request was granted pursuant to this section.

(3) The board may release information in summary, statistical, or aggregate form for educational, research, or public information purposes. The information may not identify a person or entity.

(4) Information collected by or obtained from the registry may not be used:

(a) for commercial purposes; or

(b) as evidence in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the agency responsible for licensing, regulating, or disciplining licensed health care professionals who are authorized to prescribe, administer, or dispense prescription drugs.

(5) Information obtained from the registry in accordance with the requirements of this section may be used in the course of a criminal investigation and subsequent criminal proceedings.

(6) The board shall adopt rules to ensure that only authorized individuals have access to the registry and only to appropriate information from the registry. The rules must be consistent with:

(a) the privacy provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d, et seq.;

(b) administrative rules adopted in connection with that act;

(c) Article II, section 10, of the Montana constitution; and

(d) the privacy provisions of Title 50, chapter 16.

(7) The procedures established by the board under this section may not impede patient access to prescription drugs for legitimate medical purposes.

History: En. Sec. 7, Ch. 241, L. 2011.

37-7-1507. Prescription drug registry — immunity. (1) A person or entity that complies with the reporting requirements of 37-7-1503 is not subject to civil liability or other legal or equitable relief for reporting the information to the board.

(2) Unless a court of competent jurisdiction finds that a person or entity committed an unlawful act pursuant to 37-7-1513, a person or entity in proper possession of information pursuant to this part is not subject to civil liability or other legal or equitable relief for any of the following acts or omissions:

(a) furnishing information pursuant to 37-7-1502 through 37-7-1506;

(b) receiving, using or relying on, or not using or relying on information received pursuant to 37-7-1502 through 37-7-1506; or

(c) relying on information that was entered into the registry in error, was factually incorrect, or was released by the board to the wrong person or entity.

(3) The immunity provisions of this section do not apply to the board, a state agency, or any political subdivision of the state.

History: En. Sec. 8, Ch. 241, L. 2011.

37-7-1508. Registry information retention — destruction. The board shall retain the information collected for the registry for up to 3 years, as established by rule. After 3 years, the board shall destroy the information unless it is being used as part of an active investigation.

History: En. Sec. 9, Ch. 241, L. 2011.

37-7-1509. Administration of prescription drug registry. The board may hire or contract for other professional, technical, or clerical staff as necessary to operate the registry. A contractor shall comply with the provisions regarding confidentiality of prescription information in 37-7-1505 and 37-7-1506 and is subject to the penalties specified in 37-7-1513 for unlawful acts.

History: **En. Sec. 10, Ch. 241, L. 2011.**

37-7-1510. Prescription drug registry — advisory group. (1) The board shall establish an advisory group to provide information and advice about the development and operation of the registry, including but not limited to information on:

(a) the criteria for reporting information from the registry to prescribers and pharmacists;

(b) the design and implementation of educational courses about the registry;

(c) standards for evaluating the effectiveness of the registry; and

(d) administrative rules for establishing and maintaining the registry.

(2) The advisory group consists of but is not limited to representatives of:

(a) health care licensing boards that oversee health care providers who have authority to prescribe or dispense drugs;

(b) associations that represent health care professionals who have authority to prescribe or dispense drugs;

(c) associations that advocate for patients;

(d) entities involved in tribal health services or issues; and

(e) the department of justice provided for in 2-15-2001.

(3) The advisory group may identify other individuals for appointment to the group.

(4) The board shall establish rules for the conduct of advisory group business.

(5) The advisory group may not receive or access confidential health care information contained in the registry.

History: **En. Sec. 11, Ch. 241, L. 2011.**

37-7-1511. Prescription drug registry — funding. (1) Each person licensed under Title 37 who prescribes, dispenses, or distributes controlled substances shall pay to the board a nonrefundable fee that is set by rule and that may not exceed $15.

(2) The board may apply for any available grants and may accept gifts, grants, or donations to assist in establishing and maintaining the registry.

(3) Funds collected pursuant to this part must be deposited into a state special revenue account to the credit of the department. The money must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties under this part. *(Subsection (1) terminates July 1, 2015—sec. 20, Ch. 241, L. 2011.)*

History: **En. Sec. 12, Ch. 241, L. 2011.**

Compiler's Comments

Termination: Section 20, Ch. 241, L. 2011, provided that subsection (1) of this section terminates July 1, 2015.

37-7-1512. Rulemaking authority. The board shall adopt rules to carry out and enforce this part, including but not limited to rules that:

(1) specify the type of information to be reported on prescription drug orders involving controlled substances;

(2) establish the requirements for transmitting from a pharmacy to the board prescription drug order information involving controlled substances;

(3) define the electronic format for submission of information;

(4) define the circumstances under which a pharmacy may receive a waiver from the requirement to submit information electronically;

(5) specify the procedure through which a pharmacy may request an extension of the time limit for submitting information;

(6) establish how a person or entity authorized to receive information from the registry may submit a request for the information;

(7) specify the ways in which the board may use records involving requests for registry information to document and report on statistics involving the registry;

(8) set the fees to be charged for establishing and maintaining the registry; and

(9) establish confidentiality provisions to ensure that the privacy of patient information is maintained.

History: **En. Sec. 13, Ch. 241, L. 2011.**

37-7-1513. Unlawful acts — sanctions — civil penalties. (1) A pharmacist who fails to submit prescription drug order information to the board as required by 37-7-1503 or who willfully submits incorrect prescription drug order information must be referred to the board for consideration of administrative sanctions.

(2) A person or entity authorized to possess registry information pursuant to 37-7-1504 through 37-7-1506 who willfully discloses or uses the registry information in violation of 37-7-1504 through 37-7-1506 or a rule adopted pursuant to this part must be referred to the appropriate licensing board or regulatory agency for consideration of administrative sanctions.

(3) In addition to the administrative sanction provided in subsection (2), a person or entity who willfully discloses or uses information from the registry in violation of 37-7-1504 through 37-7-1506 or a rule adopted pursuant to this part is liable for a civil penalty of up to $10,000 for each violation.

(4) The board may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general shall petition the district court to impose, assess, and recover the civil penalty.

(5) An action under subsection (3) or to enforce this part or a rule adopted under this part may be brought in the district court of any county where a violation occurs or, if mutually agreed on by the parties in the action, in the district court of the first judicial district.

(6) Civil penalties collected pursuant to this part must be deposited into the state special revenue account created pursuant to 37-7-1511 and must be used to defray the expenses of the board in establishing and maintaining the registry and in discharging its administrative and regulatory duties in relation to this part.

History: En. Sec. 14, Ch. 241, L. 2011.

37-7-1514. Report to legislature. The board shall provide a report to the appropriate interim committees of the legislature each interim, including but not limited to information on:

(1) the cost of establishing and maintaining the registry;

(2) any grants, gifts, or donations received to assist in establishing and maintaining the registry;

(3) how registry information was used; and

(4) how quickly the board was able to answer requests for information from the registry.

History: En. Sec. 15, Ch. 241, L. 2011.

CHAPTER 8
NURSING

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Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Collective bargaining for nurses, Title 39, ch. 32.

Nurses required to report child abuse, 41-3-201.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Health care information, Title 50, ch. 16.

Duty of nurse to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-8-101. Purpose. To safeguard life and health, a person practicing or offering to practice:

(1) professional nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(2) practical nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(3) as a medication aide in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part); amd. Sec. 1, Ch. 448, L. 2003; amd. Sec. 28, Ch. 126, L. 2005.

37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) "Board" means the board of nursing provided for in 2-15-1734.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Medication aide I" means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

(5) "Medication aide II" means a person who in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

(6) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(7) "Practice of nursing" embraces the practice of practical nursing and the practice of professional nursing.

(8) (a) "Practice of practical nursing" means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(9) "Practice of professional nursing" means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (9):

(a) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989; amd. Sec. 1, Ch. 584, L. 1993; amd. Sec. 25, Ch. 308, L. 1995; amd. Sec. 1, Ch. 136, L. 1997; amd. Sec. 117, Ch. 483, L. 2001; amd. Sec. 12, Ch. 54, L. 2003; amd. Sec. 1, Ch. 317, L. 2003; amd. Sec. 2, Ch. 448, L. 2003; amd. Sec. 42, Ch. 467, L. 2005; amd. Sec. 12, Ch. 502, L. 2007; amd. Sec. 1, Ch. 392, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 392 substituted "Medication aide I" for "Medication aide" as defined term and near middle after "by a physician" substituted reference to naturopathic physician and other medical providers for "an advanced practice registered nurse with prescriptive authority, a dentist, an osteopath, or a podiatrist"; inserted definition of medication aide II; and made minor changes in style. Amendment effective October 1, 2011.

37-8-103. Exemptions — limitations on authority conferred. (1) This chapter may not be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103;

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board; and

(k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician assistant, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

(a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;

(b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) "Health care professional" means an individual licensed pursuant to Title 37 as a physician assistant, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home- and community-based services program of the department of public health and human services.

(ii) "Health maintenance activities" includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) "Physician" means an individual licensed pursuant to Title 37, chapter 3.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983; amd. Sec. 2, Ch. 584, L. 1993; amd. Sec. 2, Ch. 525, L. 1995; amd. Sec. 1, Ch. 454, L. 2001; amd. Sec. 5, Ch. 519, L. 2005.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2
Board of Nursing

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.
Contested case procedure, Title 2, ch. 4, part 6.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Duties of Attorney General, 2-15-501.
Board established, 2-15-1734.
Open meetings, Title 3, ch. 3, part 2.
Preservation of records, Title 22, ch. 3, part 2.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to keep records, 37-1-101.
Disrupting meeting as disorderly conduct, 45-8-101.

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

37-8-202. Organization — meetings — powers and duties. (1) The board shall:

(a) meet annually and elect from among the members a president and a secretary;

(b) hold other meetings when necessary to transact its business;

(c) prescribe standards for schools preparing persons for registration and licensure under this chapter;

(d) provide for surveys of schools at times the board considers necessary;

(e) approve programs that meet the requirements of this chapter and of the board;

(f) conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list;

(g) cause the prosecution of persons violating this chapter. The board may incur necessary expenses for prosecutions.

(h) adopt rules regarding authorization for prescriptive authority of advanced practice registered nurses. If considered appropriate for an advanced practice registered nurse who applies to the board for authorization, prescriptive authority must be granted.

(i) adopt rules to define criteria for the recognition of registered nurses who are certified through a nationally recognized professional nursing organization as registered nurse first assistants; and

(j) establish a medical assistance program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness. The program must provide for assistance to licensees in seeking treatment for mental illness or substance abuse and monitor their efforts toward rehabilitation. The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state. For purposes of funding this medical assistance program, the board shall adjust the renewal fee to be commensurate with the cost of the program.

(2) The board may:

(a) participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses;

(b) define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses. Advanced practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or the equivalent. The applicant must be certified or in the process of being certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse anesthetists, and clinical nurse specialists.

(c) establish qualifications for licensure of medication aides, including but not limited to educational requirements. The board may define levels of licensure of medication aides consistent with educational qualifications, responsibilities, and the level of acuity of the medication aides' patients. The board may limit the type of drugs that are allowed to be administered and the method of administration.

(d) adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons;

(e) adopt rules necessary to administer this chapter; and

(f) fund additional staff, hired by the department, to administer the provisions of this chapter.

History: **En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981; amd. Sec. 2, Ch. 282, L. 1987; amd. Sec. 1, Ch. 430, L. 1989; amd. Sec. 3, Ch. 444, L. 1989; amd. Sec. 1, Ch. 290, L. 1991; amd. Sec. 3, Ch. 584, L. 1993; amd. Sec. 1, Ch. 422, L. 1995; amd. Sec. 16, Ch. 492, L. 2001; amd. Sec. 3, Ch. 448, L. 2003; amd. Sec. 43, Ch. 467, L. 2005; amd. Sec. 41, Ch. 44, L. 2007; amd. Sec. 22, Ch. 109, L. 2009; amd. Sec. 8, Ch. 122, L. 2011; amd. Sec. 3, Ch. 173, L. 2011.**

Compiler's Comments

2011 Amendments — Composite Section: Chapter 122 in (1)(j) in first sentence after "establish a" inserted "medical assistance", substituted "physically or mentally impaired" for "impaired by mental illness", substituted "addictive" for "narcotic", and at end inserted "or by mental illness or chronic physical illness", inserted third sentence regarding in-state participation of licensee in medical assistance program, and in last sentence after "funding this" inserted "medical assistance"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 173 inserted (1)(i) providing rulemaking authority to define criteria for recognition of registered nurses. Amendment effective July 1, 2011.

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: **En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.**

37-8-204. Executive director. (1) The department shall hire an executive director to provide services to the board in connection with the board's duties of:

(a) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

(b) evaluating and approving courses for affiliation of student nurses; and

(c) reviewing qualifications of applicants for licensure.

(2) The department shall hire as the executive director an individual who:

(a) is a graduate of an approved school of nursing and who has at least a master's degree with postgraduate courses in nursing;

(b) is licensed as a registered professional nurse in Montana; and

(c) has experience in teaching or administration in an approved school of nursing and who has completed at least 3 years in the clinical practice of nursing.

History: **En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981; amd. Sec. 4, Ch. 584, L. 1993; amd. Sec. 17, Ch. 492, L. 2001; amd. Sec. 44, Ch. 467, L. 2005.**

Part 3
Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: **En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Part 4
Licensing

Part Cross-References

Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Licensing to follow contested case procedure, 2-4-631.
Affidavits, Title 26, ch. 1, part 10.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Perjury, 45-7-201.
False swearing, 45-7-202.
Report of fetal death that occurs outside licensed medical facility, 46-4-114.

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma from that school; and

(3) meets other qualification requirements the board prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227; amd. Sec. 3, Ch. 84, L. 1983; amd. Sec. 13, Ch. 502, L. 2007.

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.

37-8-407. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.

37-8-409. Advanced practice registered nursing — when professional nurse may practice. (1) A person licensed under this chapter who holds a certificate in a field of advanced practice registered nursing may practice in the specified field of advanced practice registered nursing upon approval by the board of an amendment to the person's license granting a certificate in a field of advanced practice registered nursing. The board shall grant a certificate in a field of advanced practice registered nursing to a person who submits written verification of certification by a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing and who meets any other qualification requirements that the board prescribes.

(2) The board may give temporary approval to practice in a specific field of advanced practice registered nursing to a person who:

(a) intends to apply for approval under subsection (1); and

(b) has completed the advanced practice registered nursing education required in order for the person to apply to take the first national certification examination available from a board-approved national certifying body appropriate to the specific field of advanced practice registered nursing.

(3) If the person fails to obtain certification upon the person's first examination, the temporary approval provided for in subsection (2) expires on receipt of the examination results. The temporary approval may not be extended.

(4) In order to protect the public, the board may, in consultation with persons in the specific field of advanced practice registered nursing, adopt specific rules for each field of advanced practice registered nursing for the granting of temporary approval to practice and for determining the supervision of the licensee with temporary approval.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981; amd. Sec. 3, Ch. 422, L. 1995; amd. Sec. 41, Ch. 429, L. 1995.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981; amd. Sec. 14, Ch. 502, L. 2007.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.

37-8-417. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a nonrefundable fee prescribed by the board to the department at the time the application is submitted.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981; amd. Sec. 29, Ch. 126, L. 2005.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420. Terminated. Sec. 5, Ch. 408, L. 2001.

History: En. Sec. 1, Ch. 408, L. 2001.

37-8-421. Temporary practice permit. (1) The board shall issue a temporary practice permit to an individual licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that:

(a) the applicant has submitted a completed application as approved by the board;

(b) the initial screening by the board staff shows no current disciplinary action as identified by the board by rule; and

(c) there is no reason to deny a temporary practice permit under the laws of this state governing the practice of nursing.

(2) The individual may practice under a temporary practice permit until a license is granted, until a notice of proposal to deny a temporary practice permit is issued, or until the period of time adopted by the board by rule expires.

(3) A nurse who is employed under a temporary practice permit may function only under the supervision of a registered professional nurse, physician, dentist, osteopath, or podiatrist who is on the premises where and when the permittee is working and who is specifically assigned the responsibility of supervising the performance of the temporary practice permittee.

History: En. Sec. 2, Ch. 408, L. 2001.

37-8-422. Medication aide I — scope of practice. A medication aide I may:

(1) perform services requiring basic knowledge of medications and medication administration under specific circumstances as determined by the board by administrative rule;

(2) practice only in a licensed assisted living facility, as defined in 50-5-101; and

(3) practice only under the general supervision of a licensed professional or practical nurse.

History: En. Sec. 4, Ch. 448, L. 2003; amd. Sec. 6, Ch. 448, L. 2003; amd. Sec. 2, Ch. 392, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 392 in introductory clause after "aide" inserted "I". Amendment effective October 1, 2011.

37-8-423. Medication aide II — qualifications. An applicant for a license to practice as a medication aide II shall submit to the board written evidence that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of public instruction;

(2) holds a valid certificate from the department of public health and human services as a certified nursing assistant;

(3) has been employed as a certified nursing assistant in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, for a minimum of 2 years;

(4) holds a valid certificate in cardiopulmonary resuscitation;

(5) (a) has successfully completed a training program specified by the board that includes 100 hours of education consisting of classroom instruction, laboratory skills, and supervised medication administration related to basic pharmacology and principles of safe medication administration; or

(b) is currently licensed as a medication aide in another state with a program that is determined by the board to be reasonably equivalent to the board-specified program;

(6) has passed a board-approved competency examination with at least 80% proficiency; and

(7) has completed 12 hours of annual continuing education in pharmacology and medication administration.

History: **En. Sec. 3, Ch. 392, L. 2011.**

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-424. Medication aide II — scope of practice. (1) A licensed medication aide II may:

(a) perform services requiring basic knowledge of medications and medication administration subject to the limitations outlined in subsection (2);

(b) practice only in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101; and

(c) practice only under the supervision of a licensed professional or practical nurse who is on the premises.

(2) A licensed medication aide II may not:

(a) administer medications on an as-needed basis;

(b) administer parenteral or subcutaneous medications except for prelabeled, predrawn insulin;

(c) administer medications through nasogastric routes or by gastrostomy or jejunostomy tubes;

(d) convert or calculate dosages; or

(e) take verbal orders related to changes in medications and dosages.

History: **En. Sec. 4, Ch. 392, L. 2011.**

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-425. Medication aide — title. Any person who holds a valid license to practice as a medication aide in this state may use the title licensed medication aide I or licensed medication aide II and the abbreviations "LMA I" or "LMA II" respectively.

History: **En. Sec. 5, Ch. 392, L. 2011.**

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-426. Medication aide II — implementation. The board shall establish rules implementing the provisions of 37-8-102 and 37-8-422 through 37-8-426 and providing for the establishment of requirements for license renewal, including but not limited to continuing education, continued certification as a certified nursing assistant and medication aide II, and mandatory cardiopulmonary resuscitation certification.

History: **En. Sec. 6, Ch. 392, L. 2011.**

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

37-8-427 through 37-8-429 reserved.

37-8-430. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 19, Ch. 248, L. 1981.**

37-8-431. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 42, Ch. 429, L. 1995; amd. Sec. 14, Ch. 492, L. 1997; amd. Sec. 18, Ch. 492, L. 2001; amd. Sec. 14, Ch. 271, L. 2003; amd. Sec. 2, Ch. 317, L. 2003.**

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 24, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-8-433. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 584, L. 1993.

37-8-434 through 37-8-440 reserved.

37-8-441. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981; amd. Sec. 3, Ch. 282, L. 1987.

37-8-442. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981; amd. Sec. 4, Ch. 282, L. 1987.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person, including a corporation, association, or individual, to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid in the sale of or in fraudulently obtaining or furnishing a nursing diploma, license, or record;

(b) practice nursing, as defined by this chapter, under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless licensed to practice;

(d) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(e) conduct a school of nursing or a course unless the school or course has been approved by the board;

(f) otherwise violate any provision of this chapter.

(2) A misdemeanor, as provided in subsection (1), is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or both.

(3) District courts within their respective county jurisdictions may hear, try, and determine a misdemeanor and impose the prescribed punishment and fines. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243; amd. Sec. 3, Ch. 317, L. 2003.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 9
NURSING HOME ADMINISTRATORS

Part 1 — General

37-9-101. Definitions.
37-9-102. Legislative findings — purpose.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.

37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

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37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability.
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37-9-304. Fees.
37-9-305. License — grounds for discipline.
37-9-306. Deposit of fees.
37-9-307 through 37-9-310 reserved.
37-9-311. Repealed.
37-9-312. Violation.

Chapter Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Hospitals and related facilities, Title 50, ch. 5.

Duty of nursing home administrator to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Community-based nursing homes — Montana Mental Health Nursing Care Center, Title 53, ch. 21, part 4.

Part 1
General

37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1735.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Long-term care facility" means a skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of public health and human services, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(4) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether the individual's functions and duties are shared with one or more other individuals.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 60, Ch. 418, L. 1995; amd. Sec. 43, Ch. 429, L. 1995; amd. Sec. 89, Ch. 546, L. 1995; amd. Sec. 118, Ch. 483, L. 2001.

37-9-102. Legislative findings — purpose. The legislature finds that the profession of nursing home administration affects the lives of an often frail and vulnerable population that includes older and disabled Montanans who are unable to live independently. The purpose of this chapter is to regulate and control the profession to protect the public health, welfare, and safety by ensuring the ethical, qualified, and professional practice of nursing home administration.

History: En. Sec. 1, Ch. 107, L. 2007.

Part 2
Board of Nursing Home Administrators

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1735.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a presiding officer, vice presiding officer, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member must receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981; amd. Sec. 1370, Ch. 56, L. 2009.

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards that must be met by individuals in order to receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by education, training, or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to issue licenses to individuals determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards; and

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part); amd. Sec. 44, Ch. 429, L. 1995; amd. Sec. 23, Ch. 109, L. 2009.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-9-301. Qualifications for licensure — examination. (1) A person may not be granted a nursing home administrator license unless the person:

(a) is of good moral character, as determined by the board, and has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which must be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification must comply with the requirements, if any, set forth in 42 U.S.C. 1396g.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103; amd. Sec. 1, Ch. 464, L. 1989; amd. Sec. 1371, Ch. 56, L. 2009; amd. Sec. 24, Ch. 109, L. 2009.

37-9-302. Department to license pursuant to board rules — nontransferability. (1) The department shall license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's license is not transferable.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part); amd. Sec. 45, Ch. 429, L. 1995; amd. Sec. 25, Ch. 109, L. 2009.

37-9-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

37-9-304. Fees. (1) Each person who applies for licensure shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981; amd. Sec. 2, Ch. 390, L. 1983; amd. Sec. 46, Ch. 429, L. 1995; amd. Sec. 15, Ch. 492, L. 1997; amd. Sec. 45, Ch. 467, L. 2005.

37-9-305. License — grounds for discipline. A license must be granted if the applicant meets the qualifications pursuant to 37-9-301 and, if the applicant holds another professional, temporary, or restricted license, there is no finding of unprofessional conduct. If an applicant for a license is denied, the applicant is entitled to notice and a hearing as provided in Title 2, chapter 4, part 6.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110; amd. Sec. 3, Ch. 390, L. 1983; amd. Sec. 47, Ch. 429, L. 1995; amd. Sec. 16, Ch. 492, L. 1997; amd. Sec. 15, Ch. 271, L. 2003; amd. Sec. 46, Ch. 467, L. 2005; amd. Sec. 26, Ch. 109, L. 2009.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106; amd. Sec. 1, Ch. 277, L. 1983.

37-9-307 through 37-9-310 reserved.

37-9-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

37-9-312. Violation. It is unlawful for any person to act or serve in the capacity of a nursing home administrator unless the person is the holder of a license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, imprisonment for not more than 6 months, or both.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112; amd. Sec. 1372, Ch. 56, L. 2009; amd. Sec. 27, Ch. 109, L. 2009.

CHAPTER 10
OPTOMETRY

Part 1 — General

37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.
37-10-105. Purpose.

Part 2 — Board of Optometry

37-10-201. Organization — meetings.
37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.
37-10-204. Repealed.

Part 3 — Licensing

37-10-301. License required for practice — unlawful acts — injunction.
37-10-302. Qualifications — application.
37-10-303. Repealed.
37-10-304. Course in use of diagnostic and therapeutic drugs required.
37-10-305. Repealed.
37-10-306. License to be displayed in office.
37-10-307. Repealed.
37-10-308. Repealed.
37-10-309 and 37-10-310 reserved.
37-10-311. Repealed.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Optometrist to report child abuse, 41-3-201.

Duty of optometrist to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Subsection (1) does not allow an optometrist to perform surgery or laser surgery for any purpose.

(4) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1736; and

(b) "department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En.

66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 588, L. 1987; amd. Sec. 3, Ch. 121, L. 1993; amd. Sec. 1, Ch. 306, L. 1993; amd. Sec. 1, Ch. 34, L. 1999; amd. Sec. 119, Ch. 483, L. 2001.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2; amd. Sec. 3, Ch. 588, L. 1987.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Cross-References

Illegal discrimination, Title 49, ch. 2.
Governmental code of fair practices, Title 49, ch. 3.

37-10-105. Purpose. The legislature finds that the practice of the profession of optometry is a privilege and is not a natural right of individuals. The legislature considers it necessary, in the interests of protecting the public health, safety, and welfare and in order to provide for the optometric needs of the public, to provide laws and delegate rulemaking authority regarding the granting of licenses and their subsequent use so that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of optometry.

History: En. Sec. 2, Ch. 121, L. 1993.

Part 2
Board of Optometry

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1736.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to provide facilities, 37-1-101.
Disrupting meeting as disorderly conduct, 45-8-101.

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place within the state designated by the president and, in addition, whenever the president and secretary call a meeting at a location within the state. The department shall keep a record of the proceedings of the board, which must be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304; amd. Sec. 4, Ch. 121, L. 1993.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for licensure as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303; amd. Sec. 30, Ch. 126, L. 2005.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

37-10-204. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 588, L. 1987.

Part 3
Licensing

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Licensing to follow contested case procedure, 2-4-631.
Affidavits, Title 26, ch. 1, part 10.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to administer and grade examinations, 37-1-101.
Standardized forms, 37-1-104.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-10-301. License required for practice — unlawful acts — injunction. (1) A person may not:

(a) practice optometry in this state unless that person has first obtained a license;

(b) sell, barter, or offer to sell or barter a license issued by the department;

(c) purchase or procure by barter a license with intent to use the license as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a license;

(e) use or attempt to use a license that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid license;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for a license;

(h) advertise by displaying a sign or by otherwise claiming to be an optometrist without having at the time a valid license;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid license as an optometrist. However, this subsection (1)(i) does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid license. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid license as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, the board may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981; amd. Sec. 5, Ch. 121, L. 1993; amd. Sec. 31, Ch. 126, L. 2005.

Cross-References

Willfully defined, 1-1-204.
Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

37-10-302. Qualifications — application. (1) The board shall adopt rules relative to and governing the qualifications of applicants for licensure as optometrists.

(2) A person is not eligible to receive a license unless that person is of good moral character.

(3) A person is not eligible to receive a license unless that person has graduated from an accredited school of optometry in which the practice and science of optometry is taught in a course of study that is accredited by the association of regulatory boards of optometry.

(4) An applicant for a license shall file a completed application on a form provided by the department and pay a fee prescribed by the board.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981; amd. Sec. 6, Ch. 121, L. 1993; amd. Sec. 32, Ch. 126, L. 2005; amd. Sec. 47, Ch. 467, L. 2005; amd. Sec. 15, Ch. 502, L. 2007; amd. Sec. 28, Ch. 109, L. 2009.

37-10-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6); amd. Sec. 7, Ch. 121, L. 1993.

37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302, each person desiring to practice optometry shall satisfactorily complete a course with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents shall satisfactorily complete a course referred to in subsection (1)(a) and shall pass an examination.

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the national commission on accrediting or the United States commissioner of education.

(2) (a) Each person desiring to practice optometry shall:

(i) pass an examination, of the association of regulatory boards of optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the national commission on accrediting or the United States commissioner of education.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

History: En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1; amd. Sec. 4, Ch. 588, L. 1987; amd. Sec. 48, Ch. 429, L. 1995; amd. Sec. 33, Ch. 126, L. 2005; amd. Sec. 46, Ch. 130, L. 2005; amd. Sec. 48, Ch. 467, L. 2005.

Cross-References

Dispensing of drugs by health care practitioners, Title 37, ch. 2, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

Dangerous drugs, Title 45, ch. 9.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.

37-10-306. License to be displayed in office. Every person to whom a license is granted shall display the license in a conspicuous part of the person's office in which the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310; amd. Sec. 34, Ch. 126, L. 2005.

37-10-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 1/2, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981; amd. Sec. 4, Ch. 390, L. 1983; amd. Sec. 17, Ch. 492, L. 1997; amd. Sec. 16, Ch. 271, L. 2003.

37-10-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318; amd. Sec. 8, Ch. 121, L. 1993.

37-10-309 and 37-10-310 reserved.

37-10-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981; amd. Sec. 5, Ch. 588, L. 1987; amd. Sec. 9, Ch. 121, L. 1993; amd. Sec. 13, Ch. 619, L. 1993.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, must be deposited in the state general fund.

History: **En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 25, Ch. 557, L. 1987; amd. Sec. 35, Ch. 126, L. 2005.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 11
PHYSICAL THERAPY

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Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1748.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" or "assistant" means a person who:

(a) is a graduate of an accredited physical therapist assistant curriculum approved by the board;

(b) assists a physical therapist in the practice of physical therapy but who may not make evaluations or design treatment plans; and

(c) is supervised by a licensed physical therapist as described in 37-11-105.

(6) "Physical therapist assistant student" means a person who is enrolled in an accredited physical therapist assistant curriculum and who as part of the clinical and educational training is practicing under the supervision of a licensed physical therapist as described in 37-11-105.

(7) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(8) "Physical therapy aide" or "aide" means a person who aids in the practice of physical therapy, whose activities require on-the-job training, and who is supervised by a licensed physical therapist or a licensed physical therapist assistant as described in 37-11-105.

(9) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(10) "Physical therapy student" or "physical therapy intern" means an individual who is enrolled in an accredited physical therapy curriculum, who, as part of the individual's professional, educational, and clinical training, is practicing in a physical therapy setting, and who is supervised by a licensed physical therapist as described in 37-11-105.

(11) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 237, L. 1991; amd. Sec. 1, Ch. 253, L. 1995; amd. Sec. 120, Ch. 483, L. 2001.

37-11-102. Exemptions. This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 4, Ch. 237, L. 1991.

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral.

History: En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981; amd. Sec. 3, Ch. 55, L. 1987.

37-11-105. Supervision of physical therapist assistant, physical therapy aide, physical therapy student, or physical therapist assistant student. (1) A physical therapist assistant shall practice under the supervision of a licensed physical therapist who is responsible for and participates in a patient's care. This supervision requires the licensed physical therapist to make an onsite visit to the client at least once for every six visits made by the assistant or once every 2 weeks, whichever occurs first.

(2) A licensed physical therapist may not concurrently supervise more than two full-time assistants or the equivalent. This supervision does not require the presence of the assistant.

(3) A physical therapy aide shall practice under the onsite supervision of a licensed physical therapist or a licensed assistant. A licensed assistant may not concurrently supervise more than one full-time aide or the equivalent. A licensed physical therapist may not concurrently supervise more than four aides or the equivalent or two assistants and two aides or the equivalent.

(4) A physical therapy student or physical therapist assistant student shall practice with the onsite supervision of a licensed physical therapist.

History: En. Sec. 6, Ch. 491, L. 1979; amd. Sec. 2, Ch. 253, L. 1995.

37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or

(c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications. Topical medications dispensed under this section must comply with United States food and drug administration packaging and labeling guidelines.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

History: En. Sec. 2, Ch. 237, L. 1991; amd. Sec. 36, Ch. 126, L. 2005.

37-11-107. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall by rule adopt written protocols for each class of topical medication listed in 37-11-106(2) for which a prescription is required under state or federal law. Protocols must include a description of each topical medication and its actions, indications, and contraindications, as well as the proper procedure and technique for the application or administration of the medication.

History: En. Sec. 3, Ch. 237, L. 1991.

Part 2
Duties of Board and Department

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Prohibition on distribution or sale of mailing lists, 2-6-109.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1749.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-11-201. General powers — rulemaking. The board may:

(1) adopt rules to implement this chapter;

(2) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(3) take any other disciplinary action necessary to protect the public.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979; amd. Sec. 1, Ch. 115, L. 1991; amd. Sec. 3, Ch. 253, L. 1995; amd. Sec. 16, Ch. 481, L. 1997; amd. Sec. 17, Ch. 271, L. 2003; amd. Sec. 49, Ch. 467, L. 2005.

37-11-202. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department must be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 253, L. 1995.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
Duty of Department to investigate unethical conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing an certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Disciplinary authority of boards — injunctions, 37-1-136.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-11-301. License required for physical therapist and assistant — unauthorized representation as licensed therapist. (1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

(2) A person who is not licensed under this chapter as a physical therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived and who uses the words or letters “L.P.T.”, “Licensed Physical Therapist”, “P.T.”, “Physical Therapist”, “R.P.T.”, “Registered Physical Therapist”, or any other letters, words, or insignia indicating or implying that the person is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a physical therapist is guilty of a misdemeanor.

(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979; amd. Sec. 5, Ch. 253, L. 1995.

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.
Oaths, Title 1, ch. 6.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. (1) To be eligible for a license as a physical therapist, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited school of physical therapy approved by the board; and

(c) pass to the satisfaction of the board a written or computerized examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist.

(2) To be eligible for a physical therapist assistant license, an applicant must:

(a) be of good moral character and at least 18 years of age;

(b) have graduated from an accredited physical therapist assistant curriculum approved by the board; and

(c) have passed a written or computerized examination prescribed by the board.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981; amd. Sec. 6, Ch. 253, L. 1995; amd. Sec. 49, Ch. 429, L. 1995; amd. Sec. 17, Ch. 481, L. 1997.

37-11-304. Application for examination. A person who desires to be licensed as a physical therapist or a physical therapist assistant shall apply to the department on a form furnished by the department. The person shall provide evidence, satisfactory to the board, of having the qualifications preliminary to the examination required by 37-11-303.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 115, L. 1991; amd. Sec. 7, Ch. 253, L. 1995; amd. Sec. 50, Ch. 429, L. 1995; amd. Sec. 50, Ch. 467, L. 2005.

37-11-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506; amd. Sec. 8, Ch. 253, L. 1995.

37-11-306. Issuance of license — certificate as evidence. The department shall issue a license to each applicant who proves to the satisfaction of the board the applicant's fitness for a physical therapist or physical therapist assistant license under this chapter. The department shall also issue to each licensed person a license certificate, which is prima facie evidence of that person's right to practice and advertise as a licensed physical therapist or a physical therapist assistant, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507; amd. Sec. 9, Ch. 253, L. 1995.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to issue a physical therapist or physical therapist assistant license, without examination, on the payment of the required fee established by the board, to an applicant who is a physical therapist or physical therapist assistant licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. An applicant licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license or a physical therapist assistant license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983; amd. Sec. 10, Ch. 253, L. 1995.

37-11-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981; amd. Sec. 11, Ch. 253, L. 1995; amd. Sec. 51, Ch. 429, L. 1995; amd. Sec. 18, Ch. 492, L. 1997; amd. Sec. 18, Ch. 271, L. 2003.

37-11-309. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981; amd. Sec. 12, Ch. 253, L. 1995.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.

37-11-311. Display of license. Each licensee shall display the licensee's original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where the licensee practices physical therapy. A reproduction displayed in lieu of the original or official duplicate is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979; amd. Sec. 1373, Ch. 56, L. 2009.

37-11-312 through 37-11-319 reserved.

37-11-320. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist or physical therapist assistant shall report to the board any information that appears to show that another physical therapist or physical therapist assistant is:

(a) mentally or physically unable to engage safely in the practice of physical therapy or practice as an assistant; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist or a physical therapist assistant who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 2, Ch. 55, L. 1987; amd. Sec. 13, Ch. 253, L. 1995.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2;

(5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy or practice as an assistant;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not been released from commitment and declared not to require further commitment;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or assistant or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation of the person's training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979; amd. Sec. 14, Ch. 253, L. 1995; amd. Sec. 9, Ch. 490, L. 1997.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 12
CHIROPRACTIC

Part 1 — General

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Repealed.
37-12-304. Examinations — subjects.
37-12-305. Repealed.
37-12-306. Repealed.
37-12-307. Repealed.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
37-12-310 through 37-12-320 reserved.
37-12-321. Repealed.
37-12-322. Investigation of complaints.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Chapter Cross-References

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

Professional service corporations, Title 35, ch. 4.

Reporting required by health care professionals, Title 37, ch. 2, part 3.

Duty of chiropractors to report child abuse, 41-3-201.

Duty of chiropractor to report violation of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

37-12-101. Definitions — practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of chiropractors provided for in 2-15-1737.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 121, Ch. 483, L. 2001.

37-12-102. Exemptions — limitations on construction of chapter. This chapter may not be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of those professions. The practice of chiropractic as defined in this chapter is declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining medicine and surgery and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining osteopathy. Licensed chiropractors are not subject to the provisions of this title pertaining to the practice of osteopathy or liable to any prosecution under those provisions.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517; amd. Sec. 17, Ch. 224, L. 2003.**

Cross-References

Practice of medicine defined, 37-3-102.
Exemptions from physician's licensing requirements, 37-3-103.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.**

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: **(1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.**

Part 2
Board of Chiropractors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Oath defined, 1-1-201.
Open meetings, Title 2, ch. 3, part 2.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1737.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Affidavits, Title 26, ch. 1, part 10.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.
Disrupting meeting as disorderly conduct, 45-8-101.

37-12-201. Organization of board — powers and duties. The board shall:

(1) elect annually a president, vice president, and secretary-treasurer from its membership;

(2) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(3) make a schedule of minimum educational requirements that are without prejudice, partiality, or discrimination as to the different schools of chiropractic;

(4) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, the display of licenses, and the registration of interns and preceptors.

(5) make determinations of the qualifications of applicants under this chapter; and

(6) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989; amd. Sec. 1, Ch. 275, L. 1993; amd. Sec. 52, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 2001; amd. Sec. 51, Ch. 467, L. 2005.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Oath defined, 1-1-201.
Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Oath, Title 1, ch. 6.
Licensing to follow contested case procedure, 2-4-631.
Affidavits, Title 26, ch. 1, part 10.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Perjury, 45-7-201.
False swearing, 45-7-202.
Nondiscrimination in licensing, 49-3-204.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall apply to the department on a department form. Each applicant must be a graduate of a college of chiropractic approved by the board. The applicant shall present evidence showing proof of a bachelor's degree from an accredited college or university. The application must be accompanied with copies of diplomas and certificates and satisfactory evidence of good character and reputation.

(2) The applicant shall pay to the department a license fee prescribed by the board.

(3) A person who is licensed in another state or who previously graduated from or was enrolled in a chiropractic college accredited by the council on chiropractic education on or before October 1, 1995, is exempt from the bachelor's degree requirement.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989; amd. Sec. 1, Ch. 168, L. 1995; amd. Sec. 18, Ch. 224, L. 2003; amd. Sec. 52, Ch. 467, L. 2005.

37-12-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Applicants for a license to practice chiropractic must have passed an examination prescribed by the board.

(2) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983; amd. Sec. 2, Ch. 275, L. 1993; amd. Sec. 19, Ch. 224, L. 2003.

37-12-305. Repealed. Sec. 1, Ch. 265, L. 1999.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987; amd. Sec. 53, Ch. 429, L. 1995; amd. Sec. 19, Ch. 492, L. 1997; amd. Sec. 19, Ch. 271, L. 2003.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

37-12-310 through 37-12-320 reserved.

37-12-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1; amd. Sec. 14, Ch. 619, L. 1993.

37-12-322. Investigation of complaints. (1) The department may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition that renders the person unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or has been committed pursuant to 53-21-127 by a court of competent jurisdiction and has not later been declared competent or released from supervision;

(c) has procured the license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while the license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may, upon order of the board, include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these must be released to the board on written request.

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989; amd. Sec. 54, Ch. 429, L. 1995; amd. Sec. 10, Ch. 490, L. 1997.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

37-12-324. Penalty for violation. A person who practices or attempts to practice chiropractic or a person who buys, sells, or fraudulently obtains any diploma or license to practice chiropractic, whether recorded or not, or who uses the title “chiropractor”, “D.C.”, “Ph.C.”, or any word title to influence belief that the person is engaged in the practice of chiropractic without first complying with the provisions of this chapter or a person who violates any of the provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months, or both. Prosecutions for the violation of this chapter must be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor’s proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516; amd. Sec. 1374, Ch. 56, L. 2009.

CHAPTER 13
ACUPUNCTURE PRACTICE ACT

Part 1 — General

37-13-101. Citation of chapter.
37-13-102. Legislative finding and purpose.
37-13-103. Definitions.
37-13-104. Partial exemptions.

Part 2 — Board of Medical Examiners

37-13-201. Powers and duties.

Part 3 — Licensing

37-13-301. License required for practice.
37-13-302. Application for licensure — fee — qualifications.
37-13-303. Repealed.
37-13-304. Issuance of certificate of license — license fee.
37-13-305. Repealed.
37-13-306. Repealed.
37-13-307. Repealed.
37-13-308 through 37-13-310 reserved.
37-13-311. Repealed.
37-13-312. Repealed.
37-13-313. Repealed.
37-13-314. Repealed.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1
General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the diagnosis, treatment, or correction of human conditions, ailments, diseases, injuries, or infirmities by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles. The term includes the use of acupressure and the use of oriental food remedies and herbs.

(2) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(3) "Board" means the Montana state board of medical examiners.

(4) "School of acupuncture" means a school in which acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403; amd. Sec. 1, Ch. 340, L. 1995.

37-13-104. Partial exemptions. (1) (a) This chapter may not be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects that are or may be required for licensure in their respective professions.

(b) A doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry may not practice acupuncture in this state unless that doctor has completed a course and passed an examination in acupuncture as required by this chapter.

(2) Except as provided in 37-13-301 and with particular regard to the insertion of solid needles used to perform acupuncture, this chapter is not intended to limit, interfere with, or prevent a licensed health professional from practicing within the scope of the health professional's license.

(3) This chapter does not affect the practice of an occupation by an individual who does not represent to the public that the individual is licensed under this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415; amd. Sec. 2, Ch. 340, L. 1995.

Part 2
Board of Medical Examiners

Part Cross-References

Oath defined, 1-1-201.
Seal defined, 1-4-201.
Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1731.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Affidavits, Title 26, ch. 1, part 10.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Standardized forms, 37-1-104.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-13-301. License required for practice. (1) A person may not engage in the practice of acupuncture in this state unless the person is licensed under the provisions of this chapter.

(2) A person may not purport to practice acupuncture or use the title "acupuncturist" or any similar title unless the person is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404; amd. Sec. 3, Ch. 340, L. 1995.

37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall apply to the board for licensure. A fee prescribed by the board must accompany the application.

(2) An applicant shall furnish to the board evidence that the applicant is:

(a) at least 18 years of age;

(b) of good moral character as determined by the board;

(c) a graduate of a school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the national commission for the certification of acupuncturists or its successor.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981; amd. Sec. 1, Ch. 307, L. 1987; amd. Sec. 1, Ch. 327, L. 1989; amd. Sec. 53, Ch. 467, L. 2005.

37-13-303. Repealed. Sec. 2, Ch. 307, L. 1987.

History: En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: **En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.**

37-13-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.**

37-13-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981; amd. Sec. 4, Ch. 540, L. 1991; amd. Sec. 55, Ch. 429, L. 1995; amd. Sec. 20, Ch. 492, L. 1997; amd. Sec. 33, Ch. 224, L. 2003; amd. Sec. 20, Ch. 271, L. 2003.**

37-13-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.**

37-13-308 through 37-13-310 reserved.

37-13-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).**

37-13-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).**

37-13-313. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).**

37-13-314. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **(1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.**

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In the proceeding, it is not necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have practiced improperly, the court shall enjoin the respondent from practicing until the respondent has been licensed. Procedure in these cases is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: **En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414; amd. Sec. 1375, Ch. 56, L. 2009.**

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

37-13-316. Penalty. A person who violates any of the provisions of this chapter or the rules of the Montana state board of medical examiners is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: **En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416; amd. Sec. 71, Ch. 51, L. 1999.**

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 14
RADIOLOGIC TECHNOLOGISTS

Part 1 — General

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings.
37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.

37-14-302. Qualifications.
37-14-303. Repealed.
37-14-304. Repealed.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry or display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Repealed.
37-14-310. Repealed.
37-14-311. Deposit of fees.
37-14-312. Repealed.
37-14-313. Radiologist assistant — scope of practice — board approval.
37-14-314 through 37-14-320 reserved.
37-14-321. Repealed.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Chapter Cross-References

Nuclear regulation, Title 50, ch. 79.

Part 1
General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1738.

(2) "Department" means the department of labor and industry.

(3) "General supervision" means face-to-face communication, direction, observation, and evaluation by the radiologist at least monthly, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication.

(4) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(5) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(6) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(7) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(8) "Permit" means an authorization that may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(9) "Radiologic technologist" means a person, other than a licensed practitioner, who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be used in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

(10) "Radiologist" means a person who is licensed to practice medicine under Title 37, chapter 3, who is board eligible or board certified by the American board of radiology, and who resides and practices in Montana.

(11) "Radiologist assistant" means an advanced-level licensed radiologic technologist who works under the supervision of a radiologist to enhance patient care by assisting the radiologist in the diagnostic imaging environment.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 25, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 166, L. 1985; amd. Sec. 46, Ch. 83, L. 1989; amd. Sec. 122, Ch. 483, L. 2001; amd. Sec. 1, Ch. 307, L. 2003; amd. Sec. 1, Ch. 491, L. 2005.

Part 2
Board of Radiologic Technologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1738.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-14-201. Compensation of board members — meetings. (1) Board members must receive compensation and travel expenses, as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a presiding officer at the first meeting of each calendar year.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981; amd. Sec. 20, Ch. 492, L. 2001.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-14-301. Limitation of license authority — exemptions. (1) A person may not perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry if the person is certified by the board of dentistry as having passed an examination testing the person's proficiency to administer x-ray examinations;

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule; or

(iv) a person who only operates industrial x-ray equipment that does not involve procedures administered on people.

(b) This chapter may not be construed to limit or affect in any respect the practice of their respective professions by licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe x-ray procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radionuclide material) intravenously by the use of venous puncture and saline solution flush upon request and direction of a licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure, the radiologist, or personnel trained in advanced cardiac life support must be immediately available in the facility. Injections must be for diagnostic studies only and not for therapeutic purposes. Except as provided in 37-14-313, permitted injections include peripheral intravenous injections but specifically exclude intra-arterial injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under a separate licensing act may not perform any of the activities listed in this subsection. A radiologist assistant licensed under 37-14-313 may give injections related to the procedures authorized by the board to be provided by a radiologist assistant without regard to the restrictions on radiologic technologists provided in this section, except that when contrast media is used, a licensed physician or additional medical personnel trained in advanced cardiac life support must be immediately available in the facility.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981; amd. Sec. 26, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 166, L. 1985; amd. Sec. 17, Ch. 548, L. 1985; amd. Sec. 47, Ch. 83, L. 1989; amd. Sec. 2, Ch. 307, L. 2003; amd. Sec. 37, Ch. 126, L. 2005; amd. Sec. 2, Ch. 491, L. 2005.

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

37-14-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

37-14-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated to the satisfaction of the board the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant shall demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of 37-14-305 and this section must specify x-ray procedures, defined and established by rule, that may be performed by the holder. Permits are valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

(2) An applicant meeting minimum requirements for licensure must be issued a temporary permit to work as a radiologic technologist. This temporary permit expires 15 days after the date of first opportunity for examination.

(3) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided to the board that a temporary permit is necessary because of a regional hardship or emergency condition and that the prospective recipient of a temporary permit is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing to the board's satisfaction evidence of continued regional hardship or emergency conditions. The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

(4) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4); amd. Sec. 4, Ch. 166, L. 1985; amd. Sec. 54, Ch. 467, L. 2005.

37-14-307. Duty to carry or display license or permit. Each radiologic technologist or limited permit technician shall carry or display the person's license or permit while at work. The license or permit must be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5); amd. Sec. 5, Ch. 166, L. 1985; amd. Sec. 1376, Ch. 56, L. 2009.

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709; amd. Sec. 5, Ch. 390, L. 1983; amd. Sec. 6, Ch. 166, L. 1985; amd. Sec. 21, Ch. 492, L. 1997; amd. Sec. 21, Ch. 271, L. 2003.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the state special revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 1, Ch. 277, L. 1983.

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313. Radiologist assistant — scope of practice — board approval. (1) A person licensed under this chapter who has completed an advanced academic program encompassing a nationally recognized radiologist assistant curriculum or certification and who has a radiologist-directed clinical preceptorship certificate may practice as a radiologist assistant upon approval by the board. Board action upon a request for approval must be taken, with or without prior rulemaking, after a written request for approval is received by the board.

(2) (a) The specific duties allowed for a radiologist assistant may be defined by the board by rule. The rules must be consistent with guidelines adopted by the American college of radiology, the American society of radiologic technologists, the American registry of radiologic technologists, the certifying board of radiology practitioner assistants, and subsection (2)(b). The board shall adopt rules governing the scope of practice for radiologist assistants in order to resolve any conflicts in that subject between the guidelines of the associations named in this subsection.

(b) The rules must specify the functions that a radiologist assistant may perform in connection with diagnostic procedures under the supervision of a radiologist, including radiology procedures, invasive procedures, procedures as delegated by a radiologist, and the types of injection of contrast media and radioactive isotopes (radionuclide) material allowed.

(c) The rules may specify levels of supervision based on education and experience, but at a minimum, the level of supervision must be general supervision.

(d) A radiologist assistant may not interpret images, make diagnoses, or prescribe medications or therapies.

(3) A radiologist assistant may also be referred to as a "radiology practitioner assistant".

History: En. Sec. 3, Ch. 307, L. 2003; amd. Sec. 3, Ch. 491, L. 2005.

37-14-314 through 37-14-320 reserved.

37-14-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710; amd. Sec. 7, Ch. 166, L. 1985; amd. Sec. 15, Ch. 619, L. 1993.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of labor and industry;

(3) the department of public health and human services.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 61, Ch. 418, L. 1995; amd. Sec. 90, Ch. 546, L. 1995; amd. Sec. 123, Ch. 483, L. 2001.

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Criminal responsibility of corporations, 45-2-311.

CHAPTER 15

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Part 1 — General

37-15-101. Purpose.
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37-15-103. Exemptions — rulemaking.

Part 2 — Board of Speech-Language Pathologists and Audiologists

37-15-201. Meetings.
37-15-202. Powers and duties of board and department.
37-15-203. Compensation and expenses.

Part 3 — Licensing

37-15-301. License required.
37-15-302. Application forms.
37-15-303. Qualifications.
37-15-304. Repealed.
37-15-305. Repealed.
37-15-306. Repealed.
37-15-307. Application and examination fee — license fee — registration fee.
37-15-308. Repealed.
37-15-309. Repealed.
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37-15-321. Repealed.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Chapter Cross-References

Contracts by school districts for audiological services, 20-7-403(13).
Speech-language pathologist-client and audiologist-client privilege, 26-1-806.
Audiologist exempt from training period as hearing aid dispenser, 37-16-405.

Part 1
General

37-15-101. Purpose. The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative disorders, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 26, Ch. 472, L. 1997; amd. Sec. 1, Ch. 262, L. 2005.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Association" means the Montana speech-language and hearing association.

(2) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(3) "Audiology aide or assistant" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(4) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(5) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(6) "Practice of audiology" means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the selling, dispensing, and fitting of hearing aids.

(7) "Practice of speech-language pathology" means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(8) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(9) "Speech-language pathology aide or assistant" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989; amd. Sec. 1, Ch. 93, L. 1993; amd. Sec. 56, Ch. 429, L. 1995; amd. Sec. 124, Ch. 483, L. 2001; amd. Sec. 2, Ch. 262, L. 2005; amd. Sec. 1, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 in definition of practice of audiology at end inserted "and includes the selling, dispensing, and fitting of hearing aids". Amendment effective October 1, 2011.

37-15-103. Exemptions — rulemaking. (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title "speech-language pathology or audiology intern", "speech-language pathology or audiology trainee", or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who is licensed in this state as a hearing aid dispenser from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) (a) An audiologist who sells, dispenses, or fits hearing aids is exempt from the licensing requirements or other provisions of Title 37, chapter 16, except for the provisions of 37-16-304.

(b) The board may adopt rules pertaining to the selling, dispensing, and fitting of hearing aids and hearing aid parts, attachments, and accessories.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989; amd. Sec. 1, Ch. 367, L. 1999; amd. Sec. 3, Ch. 262, L. 2005; amd. Sec. 24, Ch. 19, L. 2011; amd. Sec. 2, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 19 in (7) after "who" substituted "is licensed" for "holds a certificate of registration" and substituted "hearing aid dispenser" for "hearing aid dealer". Amendment effective October 1, 2011.

Chapter 342 in (8)(a) at beginning deleted "This chapter does not exempt", after "hearing aids" inserted "is exempt", and at end inserted exception clause; inserted (8)(b) relating to adopting rules; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Regulation of hearing aid dispensers, Title 37, ch. 16.

Part 2
Board of Speech-Language Pathologists and Audiologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1739.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Biennial report to Governor and Legislature, 37-1-106.
Disrupting meeting as disorderly conduct, 45-8-101.

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the presiding officer or a majority of the members of the board. A meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists may not be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) when matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 492, L. 2001.

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of applicants;

(c) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(d) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(e) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(f) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(g) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, are prima facie evidence of the validity of the documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 57, Ch. 429, L. 1995.

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Licensing to follow contested case procedure, 2-4-631.
Public records, Title 2, ch. 6.
Duties of Department — standardized forms, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-15-301. License required. (1) A license must be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if the person meets the respective qualifications, and in those instances, the license fee must be as though for one license.

(2) A person may not practice or represent to the public that the person is a speech-language pathologist or audiologist in this state unless the person is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 2, Ch. 367, L. 1999; amd. Sec. 1377, Ch. 56, L. 2009.

37-15-302. Application forms. An application for examination for licensing a speech-language pathologist or audiologist must be made upon forms prescribed by the department.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 16, Ch. 502, L. 2007.

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant:

(a) must meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements as defined by board rule;

(b) shall pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

(3) The standards defined by the board must be equal to or greater than the standards generally accepted as the national norm.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 4, Ch. 262, L. 2005.

37-15-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6); amd. Sec. 6, Ch. 413, L. 1989.

37-15-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7); amd. Sec. 4, Ch. 413, L. 1989.

37-15-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or assistant or audiology aide or assistant must be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981; amd. Sec. 1, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 6, Ch. 262, L. 2005.

37-15-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7); amd. Sec. 2, Ch. 368, L. 1985; amd. Sec. 5, Ch. 413, L. 1989; amd. Sec. 58, Ch. 429, L. 1995; amd. Sec. 22, Ch. 271, L. 2003.

37-15-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the state special revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2); amd. Sec. 1, Ch. 277, L. 1983.

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech-language pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8); amd. Sec. 6, Ch. 413, L. 1989.

37-15-312. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8); amd. Sec. 3, Ch. 368, L. 1985.

37-15-313. Registration of aides or assistants. Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with the board on forms provided by the board all speech-language pathology aides or assistants and audiology aides or assistants working directly under the supervision of the licensee.

History: En. Sec. 4, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 3, Ch. 367, L. 1999; amd. Sec. 7, Ch. 262, L. 2005.

37-15-314 through 37-15-320 reserved.

37-15-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

37-15-323. Injunction of unlawful practice. The practice of speech-language pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913; amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 16
HEARING AID DISPENSERS

Part 1 — General

37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

37-16-201. Meetings — organization.
37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

Part 3 — Regulatory Provisions

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Part 4 — Licensing

37-16-401. License required — exception.
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37-16-405. Trainee license.
37-16-406. Admission of licensees from other states.
37-16-407. Repealed.
37-16-408. Deposit of fees, fines, and costs.
37-16-409 and 37-16-410 reserved.
37-16-411. Revocation or suspension of license — investigations — fines.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.
37-16-414. Repealed.

Part 1
General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1740.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Permanent place of business" means the primary site in this state at which a person licensed under this chapter conducts testing and fitting of hearing aids and related devices and that is open to the public at least 5 days a week.

(6) "Place of practice" means either a permanent place of business or a location on record with the department at which a person licensed under this chapter makes occasional visits. A place of practice must be affiliated with a permanent place of business.

(7) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985; amd. Sec. 125, Ch. 483, L. 2001; amd. Sec. 1, Ch. 34, L. 2009.

37-16-103. Exemptions. This chapter does not apply to a person who is:

(1) a physician licensed to practice by the state board of medical examiners;

(2) engaged in the practice of fitting hearing aids if the person's practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency; or

(3) licensed as an audiologist under the provisions of Title 37, chapter 15, except that the provisions of 37-16-304 apply to licensed audiologists.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985; amd. Sec. 1378, Ch. 56, L. 2009; amd. Sec. 3, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 inserted (3) concerning licensed audiologists; and made minor changes in style. Amendment effective October 1, 2011.

Part 2
Board of Hearing Aid Dispensers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1740.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to administer and grade examinations, 37-1-101.
Disciplinary authority of boards — injunctions, 37-1-136.
Disrupting meeting as disorderly conduct, 45-8-101.

37-16-201. Meetings — organization. (1) The board shall meet at least once each year at a place and time determined by the presiding officer and at other times and places specified by the presiding officer to carry out the provisions of this chapter.

(2) Members of the board shall annually designate one member to serve as presiding officer and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981; amd. Sec. 22, Ch. 492, L. 2001.

37-16-202. Powers and duties. (1) The powers and duties of the board are to:

(a) license persons who apply and are qualified to practice the fitting of hearing aids;

(b) establish a procedure to initiate or receive, investigate, and process complaints from any source concerning the activities of persons licensed under this chapter;

(c) adopt rules necessary to carry out this chapter;

(d) require the periodic inspection and calibration of audiometric testing equipment;

(e) initiate legal action to enjoin from operation a person engaged in the sale, dispensing, or fitting of hearing aids in this state that is not licensed under this chapter;

(f) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411; and

(g) establish and adopt minimum requirements for the form of bills of sale and receipts.

(2) Rules adopted by the board pursuant to subsection (1)(f) may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-405, 37-16-408, and 37-16-411.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985; (9)En. Sec. 11, Ch. 155, L. 1991; amd. Sec. 1, Ch. 72, L. 1995; amd. Sec. 18, Ch. 481, L. 1997; amd. Sec. 55, Ch. 467, L. 2005; amd. Sec. 29, Ch. 109, L. 2009.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Part 3
Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge. (1) A person who is actively engaged in dispensing hearing aids and related devices as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to the person at the address last given to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the department.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985; amd. Sec. 1, Ch. 155, L. 1991; amd. Sec. 60, Ch. 429, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.
Duties of Department, 37-1-101.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.

37-16-303. Bill of sale — medical evaluation requirements — waiver. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall, upon the sale of a hearing aid or related device, deliver to the customer a bill of sale that must contain:

(a) the seller's signature and license number, the name and address of the seller's permanent place of business, and if different from the permanent place of business, the address of the place of practice at which the sale was concluded;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, as well as the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned;

(e) a provision that maintenance service for the hearing aid or related device is available; and

(f) the following statement, in boldface, 12-point type: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, contact the state Board of Hearing Aid Dispensers." The statement must also list the current telephone number and address of the board's office.

(2) (a) Except as provided in subsection (2)(b), a hearing aid dispenser may not sell a hearing aid to a person unless the person has presented to the hearing aid dispenser a written statement signed by a licensed physician within the previous 6 months that states that the person's hearing loss has been medically evaluated and that there are no medical factors or conditions that render hearing aid use inadvisable as a treatment or remedy for hearing loss.

(b) If the prospective hearing aid purchaser is 18 years of age or older, the hearing aid dispenser may give that person the opportunity to waive the requirements of subsection (2)(a) in accordance with the disclosure, waiver form, and instructional brochure requirements of the U.S. food and drug administration regulations found at 21 CFR 801.420 and 21 CFR 801.421.

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985; amd. Sec. 2, Ch. 155, L. 1991; amd. Sec. 19, Ch. 481, L. 1997; amd. Sec. 23, Ch. 492, L. 2001; amd. Sec. 2, Ch. 34, L. 2009.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-16-304. Right to cancel — return of hearing aid or related device — notice — refund — dispensing fee rules. (1) (a) Except as provided in subsection (1)(b), a purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery at a permanent place of business.

(b) (i) If a licensed hearing aid dispenser has provided a hearing test or a fitting consultation to a purchaser at a place of practice other than the dispenser's permanent place of business prior to or at the time the purchaser takes delivery of a hearing aid or related device, the purchaser may, for any reason, cancel the sale within 30 days from the date of the first postdelivery followup consultation conducted in person at the place of practice.

(ii) A purchaser subject to the provisions of subsection (1)(b)(i) may waive the extended trial period if, at the date of delivery, the purchaser was offered and declined in writing the followup consultation, in which case the 30-day period in subsection (1)(a) applies.

(c) The trial period in subsection (1)(a) or (1)(b) applies notwithstanding the provisions of Title 30, chapter 14, part 5.

(2) (a) A purchaser canceling a sale under subsection (1) shall provide written notice indicating the purchaser's intention not to be bound by the sales contract. The notice must be sent to the address of the licensed hearing aid dispenser's permanent place of business at the time the hearing aid was purchased.

(b) The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in substantially the same condition as it was received by the purchaser.

(3) (a) For the purpose of determining whether cancellation has occurred within the time specified in subsection (1), written notice:

(i) given by mail is considered given on the date mailed; and

(ii) delivered in person is considered given when delivered to the hearing aid dispenser's permanent place of business or place of practice.

(b) If the purchaser and the licensed hearing aid dispenser dispute the timing of a cancellation under the terms of subsection (1)(b), the dispenser shall provide documentation to the board that the dispenser provided written notice of the purchaser's entitlement to a postdelivery followup consultation at the place of practice and that the consultation either occurred or was waived by the purchaser in writing.

(4) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for a hearing aid or related device minus any authorized dispensing fee within 10 days of receipt of written notice of cancellation.

(5) If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.

(6) A licensed hearing aid dispenser may not sell a hearing aid in this state unless the dispenser provides the purchaser with written notice of the trial period, as provided in subsection (1), and a money-back guarantee.

(7) If the hearing aid must be repaired, remade, or adjusted during the trial period, the running of the trial period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived.

History: En. Sec. 10, Ch. 155, L. 1991; amd. Sec. 20, Ch. 481, L. 1997; amd. Sec. 11, Ch. 230, L. 1999; amd. Sec. 3, Ch. 34, L. 2009.

Part 4
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to investigate unethical conduct, 37-1-101.
Standardized forms, 37-1-104.
Reporting disciplinary actions against licensees, 37-1-105.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-16-401. License required — exception. Except as provided in 37-16-103, a person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise the selling, dispensing, or fitting of hearing aids in Montana unless the person holds a current license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985; amd. Sec. 2, Ch. 72, L. 1995; amd. Sec. 4, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering the application and related functions of the board and shall show to the satisfaction of the board that the applicant:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985; amd. Sec. 3, Ch. 155, L. 1991; amd. Sec. 1379, Ch. 56, L. 2009.

37-16-403. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985; amd. Sec. 4, Ch. 155, L. 1991; amd. Sec. 3, Ch. 72, L. 1995; amd. Sec. 21, Ch. 224, L. 2003.

37-16-404. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012; amd. Sec. 90, Ch. 370, L. 1987; amd. Sec. 4, Ch. 72, L. 1995.

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take a practical examination may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and verification that the applicant has passed the written portion of the examination with a passing score as determined by board rule, the board shall issue a trainee license that entitles the applicant to engage in a training period during which the applicant shall work under the direct supervision of the sponsoring licensed hearing aid dispenser. During this time the applicant may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and the supervisor.

(3) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder shall submit a report every 90 days of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate any responsibilities to the trainee by mailing a written notice by certified mail to the board and the trainee.

(4) The trainee license terminates 1 year after issuance or after the trainee passes the practical examination, whichever occurs first.

(5) Upon completion of 1,000 hours of supervised training, the trainee is eligible to take the practical examination.

(6) A trainee who does not complete 1,000 hours of supervised training before the trainee license terminates may be issued a second trainee license upon making application and paying

the appropriate fee. The hours of training obtained under the first trainee license must be carried forward.

(7) A trainee who fails the practical examination may continue to practice under direct supervision until the trainee license terminates. A second trainee license may not be issued. Termination of the trainee license and cessation of the authority to practice do not preclude a person from retaking the practical examination upon payment of the appropriate fees.

(8) Upon passing the practical examination, a trainee may submit an application for a hearing aid dispenser license with the appropriate fee and a hearing aid dispenser license must be issued.

(9) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(10) For the purposes of this section, "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available at the same location for prompt consultation and treatment.

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985; amd. Sec. 5, Ch. 155, L. 1991; amd. Sec. 5, Ch. 72, L. 1995; amd. Sec. 21, Ch. 481, L. 1997; amd. Sec. 56, Ch. 467, L. 2005; amd. Sec. 17, Ch. 502, L. 2007; amd. Sec. 30, Ch. 109, L. 2009; amd. Sec. 5, Ch. 342, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 342 deleted former (4) that read: "(4) A person licensed as an audiologist under the provisions of Title 37, chapter 15, or a person practicing pursuant to 37-1-305 is exempt from the training period but is required to pass the examinations prescribed in this chapter"; and made minor changes in style. Amendment effective October 1, 2011.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. An applicant for a license under this section is not required to take the practical or written examination but is required to:

(1) pay the fee provided for in 37-16-402;

(2) take a test of the applicant's knowledge of the provisions of Title 37, chapter 16, and applicable rules; and

(3) comply with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985; amd. Sec. 6, Ch. 72, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-16-407. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985; amd. Sec. 6, Ch. 155, L. 1991; amd. Sec. 7, Ch. 72, L. 1995; amd. Sec. 22, Ch. 481, L. 1997; amd. Sec. 22, Ch. 492, L. 1997; amd. Sec. 23, Ch. 271, L. 2003.

37-16-408. Deposit of fees, fines, and costs. Fees, fines, and costs collected under this chapter, except those collected by a justice's court, must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985; amd. Sec. 26, Ch. 557, L. 1987; amd. Sec. 7, Ch. 155, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — investigations — fines. (1) The board may, at its discretion or upon written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure. If the investigation discloses a probable violation of this chapter or board rules, the board may institute a proceeding pursuant to the provisions of 37-1-136 and 37-1-137.

(2) A licensee or license applicant may be sanctioned as provided in 37-1-312 for any of the following causes:

(a) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court for the district where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for imposing sanctions.

(b) securing a license under this chapter through fraud, deceit, or false statements;

(c) the personal use of a false name or alias in professional practice;

(d) violating any of the provisions of this chapter;

(e) obtaining a fee or making any sale by fraud or misrepresentation;

(f) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(g) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, that is improbable, misleading, deceptive, or untruthful;

(h) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other similar words, abbreviations, or symbols that tend to connote the medical profession when that use is not accurate;

(i) permitting another to use a license or certificate;

(j) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(k) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(l) unethical conduct or gross incompetence or negligence in the performance of professional duties, including repeated failure to make indicated medical referrals of customers;

(m) selling a hearing aid or related device to a person who has not been given tests using appropriate established procedures and instrumentation in fitting hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;

(n) falsifying hearing test or evaluation results or any associated client records;

(o) refusing to cooperate with an investigation by the board by:

(i) failing to furnish requested records or documents;

(ii) failing to furnish a complete explanation of matters referred to in the complaint;

(iii) failing to respond to a subpoena issued by the board;

(iv) willfully misrepresenting any relevant fact to a board investigator; or

(v) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985; amd. Sec. 8, Ch. 155, L. 1991; amd. Sec. 8, Ch. 72, L. 1995; amd. Sec. 31, Ch. 109, L. 2009.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license is guilty of a misdemeanor and upon conviction shall be fined not less than $250 or more than $1,000, be imprisoned in the county jail for not less than 90 days or more than 1 year, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985; amd. Sec. 32, Ch. 109, L. 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.

37-16-414. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 155, L. 1991.

CHAPTER 17
PSYCHOLOGISTS

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Chapter Cross-References

Psychologist-client privilege, 26-1-807.
Liability of mental health professionals, Title 27, ch. 1, part 11.
Duty to warn of violent behavior, 27-1-1102.
Validity of consent to medical treatment, Title 41, ch. 1, part 4.
Child abuse and neglect — reports and investigations, Title 41, ch. 3, part 2.
Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest commission on colleges and universities.

(2) "Board" means the board of psychologists provided for in 2-15-1741.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents to the public that the person is a "psychologist" when the person uses a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services described in subsection (4) to individuals, groups, corporations, or the public, whether or not the person does so for compensation or fee.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981; amd. Sec. 1, Ch. 347, L. 1987; amd. Sec. 44, Ch. 18, L. 1995; amd. Sec. 126, Ch. 483, L. 2001; amd. Sec. 54, Ch. 2, L. 2009.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. (1) Except as provided in subsection (2), this chapter does not prevent:

(a) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, professional counselors licensed under Title 37, chapter 23, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology", "psychologist", "psychological", or "psychologic";

(b) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational institution, business corporation, or research laboratory insofar as these activities and services are a part of the duties of the office or position within the confines of the agency or institution;

(c) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of the supervised course of study of the student, intern, or resident in psychology;

(d) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of that person's residence to perform these activities and services. However, these persons shall report to the department the nature and extent of the services in this state prior to providing those services if the services are to exceed 10 days in a calendar year.

(e) a person authorized by the laws of the state or country of the person's former residence to perform activities and services, who has recently become a resident of this state and who has submitted a completed application for a license in this state, from performing the activities and services pending disposition of the person's application; and

(f) the offering of lecture services.

(2) Those qualified members of other professions described in subsection (1)(a) may indicate and hold themselves out as performing psychological testing, evaluation, and assessment, as described in 37-17-102(4)(b), provided that they are qualified to administer the test and make the evaluation or assessment.

(3) The board of social work examiners and professional counselors shall adopt rules that qualify a licensee under Title 37, chapter 22 or 23, to perform psychological testing, evaluation, and assessment. The rules for licensed clinical social workers and professional counselors must be consistent with the guidelines of their respective national associations. Final rules must be adopted by October 1, 2010. A qualified licensee providing services under this exemption shall comply with the rules no later than 1 year from the date of adoption of the rules.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981; amd. Sec. 2, Ch. 347, L. 1987; amd. Sec. 38, Ch. 126, L. 2005; amd. Sec. 1, Ch. 453, L. 2009.

Part 2
Board of Psychologists

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Duties of Attorney General, 2-15-501.
Board established, 2-15-1741.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a presiding officer and a secretary. Other regular meetings must be held at the times that the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the presiding officer and the majority of its members or on the request of the governor. Reasonable notice of meetings must be given in the manner prescribed by the board. The department shall keep a record of the board's proceedings.

(2) Each board member must receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. The attorney general or a representative of the attorney general may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981; amd. Sec. 24, Ch. 492, L. 2001.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses for the prosecution; and

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207; amd. Sec. 3, Ch. 671, L. 1991; amd. Sec. 62, Ch. 429, L. 1995.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
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Licensing investigation and review — record access, 37-1-135.
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Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent to the public that the person is a psychologist or engage in the practice of psychology unless the person is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1); amd. Sec. 1380, Ch. 56, L. 2009.

37-17-302. Qualifications. The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence that the person:

(1) is 18 years of age or older;

(2) is of good moral character;

(3) (a) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(b) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(c) has received a doctoral degree in psychology from an accredited college or university and has completed a course of studies that meets minimum standards specified in rules by the board; and

(4) has completed at the time of application a minimum of 2 years of supervised experience in the practice of psychology. One year of this experience must be postdoctoral but may not include more than 6 months of supervised research, teaching, or a combination of both.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2); amd. Sec. 3, Ch. 347, L. 1987; amd. Sec. 4, Ch. 671, L. 1991; amd. Sec. 1, Ch. 362, L. 1995; amd. Sec. 57, Ch. 467, L. 2005.

37-17-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2); amd. Sec. 4, Ch. 347, L. 1987.

37-17-304. Admission of licensees from other states or jurisdictions. A license without written examination may be issued to a psychologist licensed or certified in another state or Canadian jurisdiction upon meeting criteria or entering into an agreement established by the board.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3); amd. Sec. 58, Ch. 10, L. 1993; amd. Sec. 2, Ch. 362, L. 1995.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-17-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5); amd. Sec. 5, Ch. 671, L. 1991; amd. Sec. 63, Ch. 429, L. 1995; amd. Sec. 25, Ch. 492, L. 2001; amd. Sec. 24, Ch. 271, L. 2003.

37-17-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 671, L. 1991; amd. Sec. 64, Ch. 429, L. 1995; amd. Sec. 25, Ch. 271, L. 2003.

37-17-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6); amd. Sec. 3, Ch. 362, L. 1995.

37-17-309. Foreign-trained applicants. The transcripts of a foreign-trained applicant for licensure as a psychologist must be evaluated by a board-approved agency that reviews credentials. Upon receipt of this evaluation, the board shall determine whether the number of academic credits awarded and academic areas studied meets equivalent educational standards for a doctoral degree in clinical psychology established by a graduate program approved by the American psychological association.

History: En. Sec. 4, Ch. 362, L. 1995.

37-17-310. Licensure of senior psychologists. The board may issue a senior psychologist's license to an applicant who:

(1) has been licensed to practice psychology in a United States or Canadian jurisdiction for at least 20 years if the license required a doctoral degree;

(2) provides documentation demonstrating at least 10 years of clinical experience in the last 15 years prior to filing the application;

(3) has not been subject to any disciplinary action during the entire period of licensure;

(4) has passed Montana's oral examination; and

(5) has submitted an application and paid the fees required in this chapter and in the rules of the board.

History: En. Sec. 5, Ch. 362, L. 1995.

37-17-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981; amd. Sec. 5, Ch. 347, L. 1987.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In the proceeding, it is not necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have practiced improperly, the court shall enjoin the respondent from practicing unless and until the respondent has been licensed. Procedure in these cases is the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1); amd. Sec. 1381, Ch. 56, L. 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

37-17-314. Immunity from liability. There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.

History: En. Sec. 7, Ch. 347, L. 1987.

Cross-References

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

Physical therapists — nonliability for reporting violations to licensing Board, 37-11-320.

37-17-315 through 37-17-317 reserved.

37-17-318. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 671, L. 1991.

CHAPTER 18
VETERINARY MEDICINE

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Chapter Cross-References

Rules on veterinary practice to be included in standards for horseracing, 23-4-104.

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1742.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985; amd. Sec. 127, Ch. 483, L. 2001.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when the person does any of the following:

(a) represents to the public that the person is a veterinarian or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts that constitute the practice of veterinary medicine.

(2) Subsection (1)(e) may not in any way be construed to prohibit the pregnancy testing by any person of the person's own farm animals or by the person's employees regularly employed in the conduct of the person's business or by other persons whose services are rendered gratuitously.

(3) This section may not be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985; amd. Sec. 1, Ch. 650, L. 1989; amd. Sec. 1382, Ch. 56, L. 2009.

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) a veterinarian in the performance of the veterinarian's official duties, either civil or military, in the service of the United States unless the veterinarian is engaged in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university-Bozeman, or the United States;

(c) a veterinarian practicing in another state or country and authorized under the laws of that state or country to practice veterinary medicine, whose practice in this state is limited to an occasional case as that term is defined in board rule;

(d) the employment of a veterinary medical student who has successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association, if the student is employed by and works under the immediate supervision of a veterinarian licensed and registered under this chapter; or

(e) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) Nonsurgical embryo transfers in bovines may be performed under the supervision of a veterinarian licensed and residing in Montana. At a minimum, board rules regarding nonsurgical embryo transfers in bovines must address:

(a) minimum education requirements;

(b) minimum requirements of practical experience;

(c) continuing education requirements;

(d) limitations on practices and procedures that may be performed by certified individuals;

(e) the use of specific drugs necessary for safe and proper practice of certified procedures;

(f) content and administration of the certification test, including written and practical testing;

(g) application and reexamination procedures; and

(h) conduct of certified individuals, including rules for suspension, revocation, and denial of certification.

(4) This chapter does not prohibit a person from caring for and treating the person's own farm animals or being assisted in this treatment by the person's full-time employees, as defined in 2-18-601, employed in the conduct of the person's business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at the pharmacist's regular place of business.

(6) This chapter does not prohibit an employee of a licensed veterinarian from performing activities determined by board rule to be acceptable, when performed under the supervision of the employing veterinarian.

(7) This chapter does not prohibit an employee of a licensed veterinarian from rendering care for that veterinarian's animal patients in cases of emergency. Permissible emergency employee activities under this subsection include activities determined by board rule to be acceptable but do not include the performance of surgery or the rendering of diagnoses.

(8) This chapter does not prohibit a certified agency from possessing, or a certified euthanasia technician from administering, any controlled substance authorized by the board for the purpose of euthanasia pursuant to part 6 of this chapter.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985; amd. Sec. 2, Ch. 650, L. 1989; amd. Sec. 1, Ch. 21, L. 1991; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 75, L. 1997; amd. Sec. 8, Ch. 60, L. 2003; amd. Sec. 39, Ch. 126, L. 2005.

Part 2

Board of Veterinary Medicine

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Prohibition on distribution and sale of mailing lists, 2-6-109.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1742.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Licensing investigation and review — record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-18-201. Organization — meetings. (1) A board member must receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice president, and secretary-treasurer and shall hold at least two regular meetings each year. If a member of the

board, without cause, is absent from two consecutive regular meetings, that member's position on the board is vacated.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2); amd. Sec. 26, Ch. 492, L. 2001.

37-18-202. Rulemaking. The board may adopt rules necessary to carry out the purposes of this chapter.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981; amd. Sec. 3, Ch. 650, L. 1989; amd. Sec. 65, Ch. 429, L. 1995; amd. Sec. 2, Ch. 75, L. 1997; amd. Sec. 58, Ch. 467, L. 2005.

37-18-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

Part 3
Licensing — Veterinary Medicine

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Standardized forms, 37-1-104.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold out to the public that the person is a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall apply to the department for a license to do so. The application must be on a form furnished by the department, must be accompanied by satisfactory evidence of the good moral character of the applicant, and must contain evidence of the applicant's having received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a certified transcript of the applicant must be submitted to the department for inspection and verification. The certified transcript remains the property of the department.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981; amd. Sec. 2, Ch. 21, L. 1991; amd. Sec. 12, Ch. 230, L. 1999; amd. Sec. 33, Ch. 109, L. 2009.

37-18-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981; amd. Sec. 3, Ch. 21, L. 1991; amd. Sec. 66, Ch. 429, L. 1995; amd. Sec. 13, Ch. 230, L. 1999.

37-18-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation, if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted must be issued under seal and must be signed by the president and secretary-treasurer of the board and must state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, the licensee has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2); amd. Sec. 67, Ch. 429, L. 1995.

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in the person's principal office a current and valid license issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1); amd. Sec. 18, Ch. 502, L. 2007.

37-18-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985; amd. Sec. 4, Ch. 650, L. 1989; amd. Sec. 68, Ch. 429, L. 1995; amd. Sec. 23, Ch. 492, L. 1997; amd. Sec. 26, Ch. 271, L. 2003.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

37-18-309 and 37-18-310 reserved.

37-18-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210; amd. Sec. 5, Ch. 650, L. 1989.

37-18-312 reserved.

37-18-313. Municipal license fee prohibited. A license fee or license tax may not be imposed upon a person who practices veterinary medicine, as a condition to the practice of the profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

History: En. Sec. 7, Ch. 650, L. 1989; amd. Sec. 1383, Ch. 56, L. 2009.

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

Municipal licensing authority, Title 7, ch. 21, part 41.

Part 4
Licensing — Veterinary Technology
(Repealed)

37-18-401. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-406 through 37-18-410 reserved.

37-18-411. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5
Remedies for Violation

Part Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after the person's license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state. Upon conviction, the person shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both. A person convicted a second time for any violation of this chapter shall be punished by both fine and imprisonment. The district court has jurisdiction of all prosecutions brought under this section.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981; amd. Sec. 1384, Ch. 56, L. 2009.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin a person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining the defendant from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981; amd. Sec. 6, Ch. 650, L. 1989; amd. Sec. 1385, Ch. 56, L. 2009.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

Part 6
Euthanasia Technicians and Agencies — Certification

37-18-601. Purpose. The purpose of this part is to provide the most humane disposition possible of unwanted, stray, abandoned, discarded, or dangerous animals by providing for the certification of agencies and euthanasia technicians.

History: En. Sec. 1, Ch. 60, L. 2003.

37-18-602. Definitions. As used in this part, the following definitions apply:

(1) "Certified agency" means a law enforcement agency, a public or private animal control agency, or a humane society organized for the prevention of cruelty to animals that has certification from the board to possess controlled substances approved for the purpose of euthanasia.

(2) "Certified euthanasia technician" means an employee of a certified agency or a person who is working under the supervision of a licensed veterinarian and who has been certified by the board to administer a controlled substance approved by the board for the purpose of euthanasia.

(3) "Controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

(4) "Euthanasia" means the act or practice of ending the life of an animal in order to end suffering or for some other humane purpose.

(5) "Person" means an individual, corporation, partnership, government or governmental subdivision or agency, trust, or other legal entity.

History: En. Sec. 2, Ch. 60, L. 2003.

37-18-603. Powers of board — euthanasia certification. The board may:

(1) establish qualifications and prescribe the application format for certification as a certified agency or as a certified euthanasia technician and review each application for compliance with certification requirements;

(2) examine and determine the qualifications and fitness of applicants to operate as a certified agency or as a certified euthanasia technician;

(3) issue, renew, reinstate, deny, suspend, require voluntary surrender of, or revoke any certifications or temporary permits or impose other forms of discipline and enter into consent agreements and negotiated settlements with certified agencies or certified euthanasia technicians consistent with the provisions of this chapter and rules adopted pursuant to Title 37, chapter 1, and this chapter;

(4) establish a schedule of fees for certifying agencies and euthanasia technicians, ensuring that the fees are commensurate with the costs of the certification program;

(5) establish a list of controlled substances approved for the purpose of euthanasia;

(6) adopt other rules that the board or department considers necessary for the implementation of this part; and

(7) inspect any certified agency's controlled substance storage, inventory, administration procedures, and recordkeeping.

History: En. Sec. 3, Ch. 60, L. 2003.

37-18-604. Certified agency — duties. (1) A person may not possess controlled substances for the purpose of euthanasia without first becoming a licensed veterinarian or a certified agency under rules adopted by the board.

(2) Certified agencies shall apply for registration with the applicable state or federal agency to possess controlled substances approved by the board for purposes of euthanasia.

(3) Certified agencies shall comply with all state and federal laws regarding the storage, care, and administration of controlled substances. Failure to comply with these laws may result in the immediate revocation of the certification in addition to any other civil or criminal penalties provided under any other statute.

History: En. Sec. 4, Ch. 60, L. 2003.

37-18-605. Certified euthanasia technician. (1) A person may not administer controlled substances for euthanasia purposes unless the person is a licensed veterinarian, a certified euthanasia technician, or support personnel as defined by rules adopted by the board.

(2) A certified euthanasia technician may use controlled substances only for euthanasia purposes unless the certified euthanasia technician is under the direct supervision of a licensed veterinarian.

History: En. Sec. 5, Ch. 60, L. 2003.

37-18-606. Disposition of fees. Any fees collected under this part must be deposited in a state special revenue account to offset costs incurred by the board or department in carrying out this part.

History: En. Sec. 6, Ch. 60, L. 2003.

CHAPTER 19
MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

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37-19-201. Organization — compensation and expenses of members.
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Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license.
37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.
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Part 5 — Remedies for Violation

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Part 7 — Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

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37-19-901. Short title.
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Chapter Cross-References

Cadavers and autopsies, Title 50, ch. 21.

Part 1
General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

(3) "Authorizing agent" means a person legally entitled to order the final disposition of human remains, including burial, cremation, entombment, donation to medical science, or other means. The order of preference for an authorizing agent is subject to the priority of rights of disposition established in 37-19-904.

(4) "Board" means the board of funeral service provided for in 2-15-1743.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

(6) "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

(7) "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

(8) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(9) "Columbarium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

(10) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(11) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(12) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(13) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(14) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(15) "Crematory operator" means the person in charge of the licensed crematory facility.

(16) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(17) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

(18) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(19) "Embalming" means:

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gases ordinarily intended for that use by introducing the chemical substances, fluids, or gases into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

(20) "Funeral directing" includes:

(a) supervising funerals;

(b) the making of preneed or at-need contractual arrangements for funerals;

(c) preparing dead bodies for burial, other than by embalming;

(d) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(e) representing to the public that one is a funeral director.

(21) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(22) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(23) "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern, and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

(25) "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

(26) "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

(27) "Mortician" means a person licensed under this chapter to practice mortuary science.

(28) (a) "Mortuary" means a place of business licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

(29) "Mortuary science" means the profession or practice of funeral directing and embalming.

(30) "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

(31) "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

(33) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(34) "Urn" means a receptacle designed to permanently encase the cremated remains.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989; amd. Sec. 3, Ch. 38, L. 1993; amd. Sec. 2, Ch. 52, L. 1997; amd. Sec. 1, Ch. 336, L. 1999; amd. Sec. 128, Ch. 483, L. 2001; amd. Sec. 40, Ch. 126, L. 2005; amd. Sec. 11, Ch. 208, L. 2009.

Part 2
Board of Funeral Service

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1743.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-19-201. Organization — compensation and expenses of members. The board shall elect a presiding officer, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981; amd. Sec. 1386, Ch. 56, L. 2009.

37-19-202. Meetings — rulemaking power. The board shall hold meetings as may be necessary. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704; amd. Sec. 27, Ch. 492, L. 2001.

Part 3
Licensing of Morticians and Funeral Directors

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing is entitled to the renewal of the license on payment of a renewal fee to the department on or before the date set by department rule. The amount of the renewal license fee must be set by the board.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981; amd. Sec. 69, Ch. 429, L. 1995; amd. Sec. 24, Ch. 492, L. 1997.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985; amd. Sec. 22, Ch. 224, L. 2003.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981; amd. Sec. 23, Ch. 224, L. 2003.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985; amd. Sec. 25, Ch. 492, L. 1997.

37-19-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

37-19-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981; amd. Sec. 70, Ch. 429, L. 1995; amd. Sec. 26, Ch. 492, L. 1997; amd. Sec. 27, Ch. 271, L. 2003.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308 through 37-19-310 reserved.

37-19-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

37-19-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-19-316. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 378, L. 1981.

Part 4
Licensing of Mortuaries

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Licensing to follow contested case procedure, 2-4-631.
Prohibited relations with mortuaries, 33-18-301.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license. An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989; amd. Sec. 71, Ch. 429, L. 1995; amd. Sec. 59, Ch. 467, L. 2005.

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral director's license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989.

37-19-403. Power of board to set facility standards — inspection — fees. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.

37-19-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.

Part 5
Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.
Misdemeanor penalty when none specified, 46-18-212.

Part 6 reserved

Part 7
Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

37-19-701. Purpose. The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of this part to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

History: En. Sec. 1, Ch. 38, L. 1993.

37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal. (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on the date set by department rule and may be renewed upon payment of a fee set by the board. The fee must include the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(4) Crematory operator and crematory technician licenses expire on the date set by department rule and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

History: En. Sec. 4, Ch. 38, L. 1993; amd. Sec. 72, Ch. 429, L. 1995; amd. Sec. 60, Ch. 467, L. 2005.

37-19-703. Application — power of board to set standards — inspection — fees. (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

History: En. Sec. 5, Ch. 38, L. 1993.

37-19-704. Cremation authorization required — identification. (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

History: En. Sec. 6, Ch. 38, L. 1993.

37-19-705. Cremation procedures — cremation containers. (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

History: En. Sec. 7, Ch. 38, L. 1993.

37-19-706. Disposition of cremated remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

History: En. Sec. 8, Ch. 38, L. 1993.

37-19-707. Limitation of liability. (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

History: En. Sec. 9, Ch. 38, L. 1993.

37-19-708. Preneed cremation authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

History: En. Sec. 10, Ch. 38, L. 1993.

Part 8
Perpetually Maintained Cemeteries

Part Cross-References

Funeral plan trusts, Title 72, ch. 37, part 1.

37-19-801. Title. This part may be referred to as the "Perpetually Maintained Cemeteries Act".

History: En. Sec. 3, Ch. 52, L. 1997.

37-19-802. Purpose. The legislature declares that it is the public policy of this state to regulate privately owned, for-profit cemeteries to protect public health and promote financial stability through perpetual care and maintenance trusts.

History: En. Sec. 4, Ch. 52, L. 1997.

37-19-803. Application of this part — exceptions. This part applies to all cemeteries and burial grounds located in the state of Montana unless the cemetery is owned and operated by:

(1) a church or similar religious organization;

(2) a municipality or county government;

(3) a family, as a private family burial ground where lots are not offered for sale; or

(4) a community nonprofit association in which persons other than the bookkeeper and maintenance crew are not entitled to receive any pecuniary profit.

History: En. Sec. 5, Ch. 52, L. 1997.

37-19-804 through 37-19-806 reserved.

37-19-807. Powers and duties of board. The board is charged with administering this part. The board may:

(1) conduct reasonable periodic, special, or other examinations of a cemetery or cemetery company, including but not limited to an examination of the physical condition or appearance of the cemetery, an audit of the financial condition of the cemetery company and any trust funds maintained by the cemetery company, and any other examinations the board considers necessary or appropriate in the public interest. The board may also order examinations in response to public complaints. The examinations must be made by members or representatives of the board that may include a certified or registered public accountant or any other person designated by the board.

(2) issue or amend permits to operate a cemetery in accordance with the provisions of this part;

(3) adopt rules to enforce the provisions of this part;

(4) require a cemetery company to observe minimum accounting principles and practices and to keep books and records in accordance with the principles and practices for a period that the board may by rule prescribe; and

(5) require a cemetery company to provide additional contributions to the perpetual care and maintenance fund of the cemetery as provided for in this part, including but not limited to contributions not to exceed $1,000 whenever a cemetery company fails to properly care for, maintain, or preserve a cemetery.

History: En. Sec. 6, Ch. 52, L. 1997; amd. Sec. 61, Ch. 467, L. 2005.

Cross-References

Board of funeral service, 2-15-1743.

37-19-808. Authority to inspect cemeteries and audit cemetery companies. (1) The board may order an inspection of a cemetery or may audit a cemetery company. For each cemetery examined or cemetery company audited in accordance with this part, the cemetery company shall pay to the board a fee for each examination or audit as the board prescribes by rule. When an examination is ordered by the board, the cemetery company shall pay, at the state per diem rate, travel expenses, meals, and lodging for each day that a member of the board or an authorized examiner spends in examining the physical condition or appearance of a cemetery. Once audited, a cemetery company may not be required to submit to an audit at the request of the board for a period of 5 years unless complaints have resulted in a formal notice of disciplinary action by the department against the cemetery company.

(2) (a) In lieu of any financial examination that the board is authorized to make, the board may accept the audit of an independent certified or registered public accountant if the board has notified the cemetery company that the audit would be acceptable and the cemetery company has notified the board in writing that the audit will be prepared.

(b) The costs of the audit provided for in subsection (2)(a) must be borne by the cemetery company, and the scope of the audit must be at least equal to the scope of the examination required by the board.

History: En. Sec. 7, Ch. 52, L. 1997.

37-19-809 through 37-19-813 reserved.

37-19-814. Permit — application. (1) By January 1, 1998, a person operating a cemetery or a cemetery company governed by this part must have a permit issued by the board. The permit must be displayed in a conspicuous place at the cemetery.

(2) A cemetery permit expires on the date set by board rule and may be renewed for a 5-year period upon payment of a fee set by the board. An application for a permit or renewal of a permit must designate a responsible person, including that person's address and telephone number, who is available to act on behalf of the cemetery company with regard to the requirements of this part. A cemetery company may designate a different person with board approval. An application for renewal of a permit must contain:

(a) the name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the telephone number of the cemetery company;

(b) the number and dollar amount of sales of cemetery lots, grave spaces, mausoleums, crypts, niches, and burial rights for which payment has been made in full and the number of certificates or deeds of conveyance issued during the preceding 5 calendar years;

(c) an accounting of the amounts paid into the perpetual care and maintenance fund and the income received from the fund during the preceding 5 calendar or fiscal years, including the total amount due to the fund whether paid in or not, the amount due to the fund at the date of the report, and the amount expended for maintenance of the cemetery;

(d) the names and addresses of the owners of the cemetery company or the officers and directors of the cemetery company, any change in control of the cemetery company that has occurred during the past 5 calendar or fiscal years, the date of incorporation, if applicable, and the resident agent and address of the registered agent's office if the cemetery company is a corporation; and

(e) any other information that the board requires by rule.

(3) The board may set a penalty fee for late renewal of a permit.

History: En. Sec. 8, Ch. 52, L. 1997.

37-19-815. Permit — amendment. (1) Whenever a cemetery company that is subject to the provisions of this part proposes to amend its present permit for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the perpetual care and maintenance fund, expansion of a cemetery, or other changes in its operation, the cemetery company shall file an application for amendment of the permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 9, Ch. 52, L. 1997.

37-19-816. Permit — transfer of ownership. (1) If a cemetery company that is subject to the provisions of this part is to be sold, if the ownership is to be otherwise transferred, or if a controlling interest in the company is to be sold or otherwise transferred, the proposed purchaser or transferee shall file an application for the issuance of a new permit with the board.

(2) The application must be accompanied by a fee and other information that the board requires by rule.

History: En. Sec. 10, Ch. 52, L. 1997.

37-19-817 through 37-19-821 reserved.

37-19-822. Perpetual care and maintenance fund. (1) A perpetual care and maintenance fund established pursuant to the provisions of this part for the purpose of administration, care, and maintenance of a cemetery, including lots, grave spaces, crypts, niches, burial rights, or other land or buildings, is a trust fund.

(2) The net income from the fund must be used by the owners, managers, or officers and directors of a cemetery company exclusively for the care and maintenance of the cemetery and may not be used for any other purpose.

(3) The principal of a perpetual care and maintenance fund must in all cases remain intact and inviolate and must be administered with the same care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person would use to accomplish the purpose of the trust as required by this section and reflected in the trust document.

(4) Each cemetery company shall maintain at a minimum the following:

(a) a general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the perpetual care and maintenance fund;

(b) documents supporting and verifying each asset of the fund; and

(c) a trust agreement.

(5) The board may require a cemetery company to provide an accounting or audit of its perpetual care and maintenance fund.

(6) Each cemetery company shall deposit not less than 15% of the gross proceeds of each sale of a lot, grave space, crypt, niche, or burial right, as determined by the board, into the perpetual care and maintenance fund.

(7) In establishing a perpetual care and maintenance fund, a cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

(8) A perpetual care and maintenance fund may receive, take, and hold any real or personal property that is bequeathed, devised, granted, given, or otherwise contributed to it.

History: En. Sec. 11, Ch. 52, L. 1997.

37-19-823. Records required. (1) A cemetery company shall make and keep accounts and records confirming that it has made the required contributions to its perpetual care and maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.

(2) All sales contracts and deeds, unless otherwise authorized by the board, issued by a cemetery company must be numbered prior to their execution by the cemetery company and must contain those items the board prescribes by rule.

History: En. Sec. 12, Ch. 52, L. 1997.

37-19-824. Conveyance. (1) An instrument of conveyance for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) (a) The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance.

(b) An instrument of conveyance must be recorded by the cemetery company in the office of the county clerk and recorder and returned to the purchaser.

(4) An instrument of conveyance must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance.

History: En. Sec. 13, Ch. 52, L. 1997; amd. Sec. 2, Ch. 336, L. 1999.

37-19-825. Preexisting cemeteries. A cemetery or cemetery company that is in existence on January 1, 1998, shall obtain the necessary permits required by this part in order to continue operation and is subject as of January 1, 1998, to the provisions of this part.

History: En. Sec. 14, Ch. 52, L. 1997.

37-19-826. Repealed. Sec. 6, Ch. 336, L. 1999.

History: En. Sec. 15, Ch. 52, L. 1997.

37-19-827. Contract for prearranged funeral plan or related services — trust requirement — interest — exception. (1) Prearranged funeral or related services may be presented, negotiated, and sold to the public only by a licensed funeral director or licensed mortician.

(2) Except as provided in subsection (4), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for the purposes for which it was furnished until the obligations of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation have been fulfilled according to the terms of the contract or, by mutual consent of the parties, until the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement.

(4) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.

History: En. Sec. 3, Ch. 336, L. 1999.

37-19-828. Trust fund — deposit of money. (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and that receives money under the contract shall deposit the money within 3 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union must have its principal place of business in this state and must be organized under the laws of this state or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.

History: En. Sec. 4, Ch. 336, L. 1999.

37-19-829. Report of entity holding deposited money. A banking institution, savings or building and loan association, or credit union shall report to the department prior to February 1 of each year all amounts that it has received and held in trust accounts created as provided in 37-19-828. The report must contain the name and address of each trustee and trust beneficiary and must contain the amount of principal in each account and the amount of interest or dividends paid on each account.

History: En. Sec. 5, Ch. 336, L. 1999.

37-19-830 reserved.

37-19-831. Penalty — injunction. (1) A person who violates a provision of this part is guilty of a misdemeanor and upon conviction shall be fined not more than $500 or imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this part by injunction or any other appropriate proceeding.

History: En. Sec. 16, Ch. 52, L. 1997.

Part 9

Right of Disposition of Remains

37-19-901. Short title. This part may be cited as the “Montana Right of Disposition Act”.

History: En. Sec. 1, Ch. 208, L. 2009.

37-19-902. Purpose. The legislature declares that it is the public policy of this state to provide an orderly and uniform system to determine which individuals hold the right to direct and carry out funeral and disposition arrangements for the remains of deceased individuals.

History: En. Sec. 2, Ch. 208, L. 2009.

37-19-903. Prepaid funeral arrangements — disposition directions — definition. (1) A person who is 18 years of age or older and of sound mind, by entering into a prepaid funeral contract with any mortuary licensed under Title 37, chapter 19, part 4, or by providing disposition directions may direct the location, manner, and conditions of disposition of the person’s remains and the arrangements for funeral goods and services to be provided upon the person’s death.

(2) The funeral prearrangements that are prepaid and contracted for with a licensed mortuary or the disposition directions may not be canceled or substantially revised unless the cancellation or substantial revision has been ordered by a person appointed by the decedent in the prepaid funeral contract or the disposition directions as the person authorized to cancel or revise the terms of the prepaid funeral contract or the disposition directions.

(3) As used in this section, the term “disposition directions” means:

(a) a video provided in a replayable format of the person who is the subject of the disposition directions in which the person describes the wishes for disposition and that is accompanied by a written attestation of the video accuracy by two witnesses who are at least 18 years of age; or

(b) a legible written instrument signed by the person who is the subject of the disposition directions and by two people who are at least 18 years of age who have witnessed the signing by the person. The written instrument may be but is not limited to a letter of instructions, a will, a trust document, or advance directives. A written instrument that does not name a person with the right to control the decedent's disposition must follow the priority of rights of disposition provided in 37-19-904.

History: **En. Sec. 3, Ch. 208, L. 2009.**

37-19-904. Priority of rights of disposition. (1) A person who is 18 years of age or older and of sound mind wishing to authorize another person to control the disposition of the person's remains may execute an affidavit or a written instrument before a notary public in substantially the following form:

"State of Montana] ss
County of ....]

I, ... [person designating another person to control the disposition of the person's remains] do hereby designate .... [person who is provided with the right to control the disposition] with the right to control the disposition of my remains upon my death. I .... have or .... have not attached specific directions concerning the disposition of my remains with which the designee shall substantially comply, provided the directions are lawful and there are sufficient resources in my estate to carry out the directions. Subscribed and sworn to before me this .... day of the month of .... of the year ...."

(2) Except as provided in 37-19-903, 37-19-907, and subsection (1) of this section, the right to control the disposition of the remains of a deceased person, including the location, manner, and conditions of the disposition and arrangements for funeral goods and services, vests in the following persons in the order named if the named person is 18 years of age or older and is of sound mind:

(a) for a decedent who was on active duty in the armed forces of the United States, a member of the Montana national guard, or a member of the federal reserves of the armed forces of the United States at the time of the decedent's death, any person named by the decedent as the person with the right to control the decedent's disposition in a department of defense form 93;

(b) a person designated by the decedent as the person with the right to control the decedent's disposition in an affidavit or written instrument executed in accordance with subsection (1);

(c) the surviving spouse;

(d) the sole surviving child of the decedent or, if there is more than one child of the decedent, the majority of the surviving children. However, less than one-half of the surviving children may be vested with the rights and duties provided in this section if those surviving children have used reasonable efforts to notify all other surviving children of their instructions and they are not aware of opposition to their instructions on the part of more than one-half of all surviving children.

(e) the surviving parent or parents of the decedent. If one of the surviving parents is absent, the remaining parent may be vested with the rights and duties provided in this section if that parent's reasonable efforts have been unsuccessful in locating the absent surviving parent.

(f) the surviving sibling of the decedent or, if there is more than one sibling of the decedent, the majority of the surviving siblings. However, less than one-half of the surviving siblings may be vested with the rights and duties provided in this section if those siblings have used reasonable efforts to notify all other surviving siblings of their instructions and they are not aware of any opposition to their instructions on the part of more than one-half of all surviving siblings.

(g) the surviving grandparent of the decedent or, if there is more than one surviving grandparent, the majority of the grandparents. However, less than one-half of the surviving grandparents may be vested with the rights and duties provided in this section if those grandparents have used reasonable efforts to notify all other surviving grandparents of their instructions and are not aware of any opposition to their instructions on the part of more than one-half of all surviving grandparents.

(h) the guardian of the decedent at the time of the decedent's death, if a guardian had been appointed;

(i) the personal representative of the estate of the decedent;

(j) the person in classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may exercise the right of disposition.

(k) if the disposition of the remains of the decedent is the responsibility of the state or a local government, the public officer, administrator, or employee responsible for arranging the disposition of the decedent's remains; and

(l) in the absence of any person provided for in subsections (2)(a) through (2)(k), any other person, including the mortician with custody of the remains, who is willing to assume the responsibility to act and arrange the disposition of the decedent's remains after attesting in writing that a good faith effort has been made to contact the individuals provided for in subsections (2)(a) through (2)(k).

History: En. Sec. 4, Ch. 208, L. 2009; amd. Sec. 1, Ch. 158, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 158 inserted (2)(a) regarding disposition of remains by department of defense form 93; and made minor changes in style. Amendment effective October 1, 2011.

Retroactive Applicability: Section 2, Ch. 158, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to individuals who executed a department of defense form 93 before October 1, 2011."

37-19-905. Arrangements provided by survivors. The provisions of 37-19-903 and 37-19-904(1) do not prevent the decedent's survivors, in the order listed in 37-19-904, from pursuing, at their own expense, meaningful services and making arrangements for funeral services that do not conflict with the decedent's instructions for disposition made in accordance with 37-19-903 and 37-19-904(1).

History: En. Sec. 5, Ch. 208, L. 2009.

37-19-906. Loss of right of disposition. A person entitled to the right of disposition under 37-19-904 forfeits that right and the right is passed on to the next qualifying person listed in 37-19-904 under the following circumstances:

(1) the person is charged with deliberate or negligent homicide in connection with the decedent's death. However, if the charges against the person are dismissed or if the person is acquitted of the charges, the right of disposition is returned to the person.

(2) the person does not exercise the person's right of disposition within 2 days after notification of the death of the decedent or within 3 days of the decedent's death, whichever is earlier;

(3) the person and the decedent are spouses and a petition to dissolve the marriage was pending at the time of the decedent's death; or

(4) the district court, pursuant to 37-19-907, determines that the person entitled to the right of disposition and the decedent were estranged at the time of death. For purposes of this subsection, "estranged" means a physical and emotional separation from the decedent existing at the time of death and that existed for a period of time prior to death that clearly demonstrates an absence of affection, trust, and regard for the decedent.

History: En. Sec. 6, Ch. 208, L. 2009.

37-19-907. Disputes. (1) The district court for the county where the decedent resided may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition and make decisions regarding the decedent's remains if those sharing the right of disposition under 37-19-904 cannot agree.

(2) The following provisions apply to the court's determination under subsection (1):

(a) If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and they cannot, by majority vote, make a decision regarding the disposition of the decedent's remains, any of the persons or a mortician with custody of the remains may file a petition asking the district court to make a determination in the matter.

(b) In making a determination, the district court shall consider the following:

(i) the reasonableness and practicality of any proposed funeral arrangements and disposition;

(ii) the degree of the personal relationship between the decedent and each of the persons claiming the right of disposition;

(iii) the desires of the person or persons who are able and willing to pay the cost of the funeral arrangements and disposition;

(iv) the convenience and needs of other family and friends wishing to pay respects;

(v) the desires of the decedent;

(vi) the degree to which the funeral arrangements would allow maximum participation by all those wishing to pay their respects.

(3) (a) In the event of a dispute regarding the right of disposition, a mortician may not be held liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for final disposition of the remains until the mortician receives a court order or a written agreement signed by the parties to the disagreement that decides the final disposition of the remains.

(b) If the mortician retains the remains for final disposition while the parties are in disagreement, the mortician may embalm or refrigerate and shelter the body, or both, in order to preserve the body while awaiting the final decision of the district court and may add the cost of embalming or refrigeration and sheltering, or both, to the final disposition costs.

(c) If a mortician files a petition under this section for an order of disposition from the district court, the mortician may add the legal fees and court costs associated with the petition to the final disposition costs.

(d) This section may not be construed to require or to impose a duty upon a mortician to bring an action under this section. A mortician may not be held criminally or civilly liable for choosing not to bring an action under this section.

(4) Except to the extent that it may be considered by the district court under subsection (2)(b)(iii), the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and disposition does not give that person a greater right of disposition than the person would otherwise have.

(5) The personal representative of the estate of the decedent does not have, by virtue of being the personal representative, a greater claim to the right of disposition than the person would otherwise have under the provisions of this part.

History: **En. Sec. 7, Ch. 208, L. 2009.**

37-19-908. Right to rely. (1) A person who signs a funeral agreement, cremation authorization form, or other authorization for disposition must be considered as warranting the truthfulness of any facts set forth in the agreement, form, or authorization, including:

(a) the identity of the decedent whose remains are subject to the disposition; and

(b) the person's authority to order the disposition.

(2) A mortician may rely on the funeral service agreement, cremation authorization form, or other authorization and may carry out the instructions of the person or persons who the mortician reasonably believes hold the right of disposition.

(3) A mortician is not responsible to contact or to independently investigate the existence of any next of kin or relatives of the decedent.

(4) If a class includes two or more persons who are equal in priority, a mortician may rely on and act according to the instructions of the first person in the class to make funeral and disposition arrangements if another person in the class has not provided to the mortician written notice of the person's objections to the arrangements and the mortician does not have knowledge of any objections to the arrangements by other members of the class.

History: **En. Sec. 8, Ch. 208, L. 2009.**

37-19-909. Immunity. A mortuary or mortician who relies in good faith on the instructions of an individual claiming the right of disposition is not subject to criminal or civil liability or subject to disciplinary action for carrying out the disposition of the remains in accordance with the instructions.

History: **En. Sec. 9, Ch. 208, L. 2009.**

CHAPTER 20
PHYSICIAN ASSISTANTS

Part 1 — General

37-20-101. Qualifications of supervising physician and physician assistant.
37-20-102. Repealed.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Unlicensed practice — penalties.

Part 2 — Board of Medical Examiners

37-20-201. Repealed.
37-20-202. Adoption of rules.
37-20-203. Licensing of physician assistants.

Part 3 — Supervision Agreements

37-20-301. Requirements for use of physician assistant — supervision agreement — duties and delegation agreement — content — approval — filing.
37-20-302. Application for and renewal of license — fees.
37-20-303. Exemptions from licensure requirement.

Part 4 — Regulation of Practice

37-20-401. Definitions.
37-20-402. Criteria for licensing physician assistant.
37-20-403. Physician assistant as agent of supervising physician — degree of supervision required — scope of practice.
37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.
37-20-405. Billing.
37-20-406. Liaison to board.
37-20-407 and 37-20-408 reserved.
37-20-409. Repealed.
37-20-410. Participation in disaster and emergency care — liability of physician assistant and supervising physician.
37-20-411. Unlawful acts.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Abortion restricted to licensed physician or physician assistant, 50-20-109.

Duty of physician assistant to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
General

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-101. Qualifications of supervising physician and physician assistant. (1) The supervising physician named in the supervision agreement required by 37-20-301 shall:

(a) possess a current, active license to practice medicine in this state; and

(b) exercise supervision over the physician assistant in accordance with the rules adopted by the board and retain professional and legal responsibility for the care and treatment of patients by the physician assistant.

(2) A physician assistant named in the supervision agreement required by 37-20-301 must have a current, active Montana physician assistant license.

History: En. Sec. 3, Ch. 380, L. 1981; amd. Sec. 9, Ch. 97, L. 1989; amd. Sec. 6, Ch. 519, L. 2005.

37-20-102. Repealed. Sec. 16, Ch. 419, L. 1993.

History: En. Sec. 8, Ch. 380, L. 1981; amd. Sec. 10, Ch. 97, L. 1989.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant to perform those functions and duties specifically delegated by law to persons licensed as optometrists, as defined under Title 37, chapter 10. A physician assistant may perform an abortion.

History: En. Sec. 10, Ch. 380, L. 1981; amd. Sec. 11, Ch. 97, L. 1989; amd. Sec. 1, Ch. 321, L. 1995; amd. Sec. 7, Ch. 519, L. 2005.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

37-20-104. Unlicensed practice — penalties. (1) A person who employs a physician assistant or holds out to the public that the person is a physician assistant without having been issued a Montana physician assistant license is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and submitting a supervision agreement to the board, a physician assistant may not practice as a physician assistant in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction and the application of other penalties as provided by law.

History: En. Sec. 5, Ch. 380, L. 1981; amd. Sec. 12, Ch. 97, L. 1989; amd. Sec. 1, Ch. 446, L. 1991; amd. Sec. 7, Ch. 419, L. 1993; amd. Sec. 8, Ch. 519, L. 2005.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Reporting disciplinary actions against licensees, 37-1-105.
Disciplinary authority of boards — injunctions, 37-1-136.
Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Part 2
Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1731.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Board of Medical Examiners, Title 37, ch. 3, part 2.

37-20-201. Repealed. Sec. 32, Ch. 519, L. 2005.

History: En. Sec. 1, Ch. 380, L. 1981.

37-20-202. Adoption of rules. The board may adopt administrative rules to implement the provisions of this chapter and set forth grounds for disciplinary action.

History: En. Sec. 9, Ch. 380, L. 1981; amd. Sec. 13, Ch. 97, L. 1989; amd. Sec. 3, Ch. 446, L. 1991; amd. Sec. 9, Ch. 419, L. 1993; amd. Sec. 9, Ch. 519, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duty of boards to adopt rules on conduct, 37-1-121.

37-20-203. Licensing of physician assistants. The board may issue either an active or inactive license to a physician assistant applying for a license or license renewal in Montana.

History: En. Sec. 10, Ch. 419, L. 1993; amd. Sec. 27, Ch. 492, L. 1997; amd. Sec. 10, Ch. 519, L. 2005.

Part 3
Supervision Agreements

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-20-301. Requirements for use of physician assistant — supervision agreement — duties and delegation agreement — content — approval — filing. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant in the practice of medicine, as defined in 37-3-102, and as provided in this chapter and a physician assistant may not be employed or practice as a physician assistant unless the physician assistant:

(a) is supervised by a physician licensed in this state;

(b) is licensed by the board;

(c) has submitted a physician assistant supervision agreement to the board on a form prescribed by the department; and

(d) has paid to the board the applicable fees required by the board.

(2) A supervising physician and the supervised physician assistant shall execute a duties and delegation agreement constituting a contract that defines the physician assistant's professional relationship with the supervising physician and the limitations on the physician assistant's practice under the supervision of the supervising physician. The agreement must be kept current, by amendment or substitution, to reflect changes in the duties of each party occurring over time. The board may by rule specify other requirements for the agreement. A physician assistant licensed by the board before October 1, 2005, shall execute a duties and delegation agreement with a supervising physician by October 1, 2006.

(3) A physician assistant and the physician assistant's supervising physician shall keep the supervision agreement and the duties and delegation agreement at their place of work and provide a copy upon request to a health care provider, a health care facility, a state or federal agency, the board, and any other individual who requests one.

History: En. Sec. 2, Ch. 380, L. 1981; amd. Sec. 14, Ch. 97, L. 1989; amd. Sec. 2, Ch. 446, L. 1991; amd. Sec. 11, Ch. 419, L. 1993; amd. Sec. 62, Ch. 467, L. 2005; amd. Sec. 11, Ch. 519, L. 2005.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-20-302. Application for and renewal of license — fees. (1) A person desiring to practice as a physician assistant shall submit an application to the department on a form prescribed by the department and pay all applicable fees to the department. The applicant shall provide the authorization necessary for the release of records or other information necessary for licensure to the department. The burden of proving that the applicant has complied with all application requirements is on the applicant. However, the department may make an independent investigation to determine whether the applicant possesses the required qualifications and whether the applicant has ever committed unprofessional conduct.

(2) In order to renew a license, a physician assistant shall pay to the department a renewal fee as prescribed by the board. The renewal fee must be paid before the expiration date of the license, as set forth in department rule. The department shall send renewal notices before the renewal is due. Except as provided in 37-1-138, failure to pay a renewal fee results in the expiration of the license.

History: En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 97, L. 1989; amd. Sec. 5, Ch. 540, L. 1991; amd. Sec. 12, Ch. 419, L. 1993; amd. Sec. 73, Ch. 429, L. 1995; amd. Sec. 28, Ch. 492, L. 1997; amd. Sec. 24, Ch. 224, L. 2003; amd. Sec. 28, Ch. 271, L. 2003; amd. Sec. 63, Ch. 467, L. 2005; amd. Sec. 12, Ch. 519, L. 2005.

37-20-303. Exemptions from licensure requirement. (1) This chapter does not prohibit or require a license as a physician assistant for the rendering of medical or medically related services if the service rendered is within the applicable scope of practice for any of the following individuals:

(a) a physician assistant providing services in an emergency or catastrophe, as provided in 37-20-410;

(b) a federally employed physician assistant;

(c) a registered nurse, an advanced practice registered nurse, a licensed practical nurse, or a medication aide licensed or authorized pursuant to Title 37, chapter 8;

(d) a student physician assistant when practicing in a hospital or clinic in which the student is training;

(e) a physical therapist licensed pursuant to Title 37, chapter 11;

(f) a medical assistant, as provided in 37-3-104;

(g) an emergency medical technician licensed pursuant to Title 50, chapter 6; or

(h) any other medical or paramedical practitioner, specialist, or medical assistant, technician, or aide when licensed or authorized pursuant to laws of this state.

(2) A licensee or other individual referred to in subsection (1) who is not a licensed physician assistant may not use the title "PA" or "PA-C" or any other word or abbreviation to indicate or induce others to believe that the individual is a physician assistant.

History: **En. Sec. 6, Ch. 380, L. 1981; amd. Sec. 16, Ch. 97, L. 1989; amd. Sec. 25, Ch. 224, L. 2003; amd. Sec. 4, Ch. 243, L. 2003; amd. Sec. 13, Ch. 519, L. 2005.**

Part 4
Regulation of Practice

Part Cross-References

Coverage required for services provided by physician assistants, 33-22-114.

37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1731.

(2) "Duties and delegation agreement" means a written contract between the supervising physician and the physician assistant that meets the requirements of 37-20-301.

(3) "Physician assistant" means a member of a health care team, licensed by the board, who provides medical services that may include but are not limited to examination, diagnosis, prescription of medications, and treatment under the supervision of a physician licensed by the board.

(4) "Supervising physician" means a medical doctor or doctor of osteopathy licensed by the board who agrees to a supervision agreement and a duties and delegation agreement.

(5) "Supervision agreement" means a written agreement between a supervising physician and a physician assistant providing for the supervision of the physician assistant.

History: **En. Sec. 1, Ch. 97, L. 1989; amd. Sec. 14, Ch. 519, L. 2005.**

37-20-402. Criteria for licensing physician assistant. A person may not be licensed as a physician assistant in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program accredited by the accreditation review commission on education for the physician assistant or, if accreditation was granted before 2001, accredited by the American medical association's committee on allied health education and accreditation or the commission on accreditation of allied health education programs;

(3) has taken and passed an examination administered by the national commission on the certification of physician assistants; and

(4) holds a current certificate from the national commission on the certification of physician assistants.

History: **En. Sec. 2, Ch. 97, L. 1989; amd. Sec. 13, Ch. 419, L. 1993; amd. Sec. 15, Ch. 519, L. 2005.**

37-20-403. Physician assistant as agent of supervising physician — degree of supervision required — scope of practice. (1) A physician assistant is considered the agent of the supervising physician with regard to all duties delegated to the physician assistant and is professionally and legally responsible for the care and treatment of a patient by a physician assistant licensed in accordance with this chapter. A health care provider shall consider the instructions of a physician assistant as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant.

(2) Onsite or direct supervision of a physician assistant by a supervising physician is not required if the supervising physician has provided a means of communication between the supervising physician and the physician assistant or an alternate means of supervision in the event of the supervising physician's absence.

(3) A physician assistant may diagnose, examine, and treat human conditions, ailments, diseases, injuries, or infirmities, either physical or mental, by any means, method, device, or instrumentality authorized by the supervising physician.

History: **En. Sec. 3, Ch. 97, L. 1989; amd. Sec. 74, Ch. 429, L. 1995; amd. Sec. 16, Ch. 519, L. 2005.**

37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant may prescribe, dispense, and administer drugs to the extent authorized by the supervising physician.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232 is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 34 days.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant shall maintain registration with the federal drug enforcement administration if the physician assistant is authorized by the supervising physician to prescribe controlled substances.

(e) A prescription written by a physician assistant must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

History: En. Sec. 4, Ch. 97, L. 1989; amd. Sec. 14, Ch. 419, L. 1993; amd. Sec. 2, Ch. 327, L. 1995; amd. Sec. 17, Ch. 519, L. 2005.

37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill for a service provided by a supervised physician assistant.

History: En. Sec. 5, Ch. 97, L. 1989; amd. Sec. 15, Ch. 419, L. 1993; amd. Sec. 18, Ch. 519, L. 2005.

37-20-406. Liaison to board. The Montana academy of physician assistants may appoint one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

History: En. Sec. 6, Ch. 97, L. 1989; amd. Sec. 19, Ch. 519, L. 2005.

37-20-407 and 37-20-408 reserved.

37-20-409. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 419, L. 1993.

37-20-410. Participation in disaster and emergency care — liability of physician assistant and supervising physician. (1) A physician assistant licensed in this state, licensed or authorized to practice in another state, territory, or possession of the United States, or credentialed as a physician assistant by a federal employer who provides medical care in response to an emergency or a federal, state, or local disaster may provide that care either without supervision as required by this chapter or with whatever supervision is available. The provision of care allowed by this subsection is limited to the duration of the emergency or disaster.

(2) A physician who supervises a physician assistant providing medical care in response to an emergency or disaster as described in subsection (1) need not comply with the requirements of this chapter applicable to supervising physicians.

(3) A physician assistant referred to in subsection (1) who voluntarily, gratuitously, and other than in the ordinary course of employment or practice renders emergency medical care during an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in providing that care if the injury is caused by simple or ordinary negligence and if the care is provided somewhere other than in a health care facility as defined in 50-5-101 or a physician's office where those services are normally provided.

(4) A physician who supervises a physician assistant voluntarily and gratuitously providing emergency care at an emergency or disaster described in subsection (1) is not liable for civil damages for a personal injury resulting from an act or omission in supervising the physician assistant if the injury is caused by simple or ordinary negligence on the part of the physician assistant providing the care or on the part of the supervising physician.

History: En. Sec. 31, Ch. 519, L. 2005.

37-20-411. Unlawful acts. A person who performs acts constituting the practice of medicine in this state acts unlawfully if the person:

(1) has not been issued a license pursuant to this chapter and is not exempt from the licensing requirement of this chapter; or

(2) has received a license pursuant to this chapter but has not completed a duties and delegation agreement or a supervision agreement.

History: En. Sec. 30, Ch. 519, L. 2005.

CHAPTER 21
DIETITIANS
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Department of Public Health and Human Services
(Repealed)

Part 3 — Qualifications
(Repealed)

Part 4 — Remedies—Penalty
(Repealed)

Part 1
General
(Repealed)

37-21-101. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 1, Ch. 427, L. 1983; amd. Sec. 62, Ch. 418, L. 1995; amd. Sec. 91, Ch. 546, L. 1995.

Part 2
Department of Public Health and Human Services
(Repealed)

37-21-201. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 4, Ch. 427, L. 1983.

Part 3
Qualifications
(Repealed)

37-21-301. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 2, Ch. 427, L. 1983.

37-21-302. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 3, Ch. 427, L. 1983; amd. Sec. 29, Ch. 271, L. 2003.

Part 4
Remedies — Penalty
(Repealed)

37-21-401 through 37-21-404 reserved.

37-21-405. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 6, Ch. 427, L. 1983.

37-21-406. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 5, Ch. 427, L. 1983.

CHAPTER 22
SOCIAL WORK

Part 1 — General

37-22-101. Purpose.
37-22-102. Definitions.

Part 2 — Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board.

Part 3 — Licensing

37-22-301. License requirements — exemptions.
37-22-302. Fees.
37-22-303. Repealed.
37-22-304. Repealed.
37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice.
37-22-306. Repealed.
37-22-307 through 37-22-310 reserved.
37-22-311. Repealed.
37-22-312. Repealed.

Part 4 — Regulation

37-22-401. Privileged communications — exceptions.
37-22-402 through 37-22-410 reserved.
37-22-411. Violations — penalties.

Chapter Cross-References

Liability of mental health professionals, Title 27, ch. 1, part 11.
Duty to warn of violent behavior, 27-1-1102.
Disability insurance — freedom of choice in selection of practitioners, 33-22-111.
Child abuse and neglect — reports and investigations — penalty, Title 41, ch. 3, part 2.
Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-22-101. Purpose. (1) The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by:

(a) ensuring the ethical, qualified, and professional practice of social work; and

(b) instituting an effective mechanism for obtaining accurate public information regarding an applicant's criminal background:

(i) to prevent convicted criminal offenders who committed crimes relevant to working with children, the elderly, the mentally ill, or other vulnerable persons from obtaining a Montana social work license as an attempt to gain access to and perpetrate crimes against new victims; and

(ii) to protect the state from claims of negligence.

(2) This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

History: En. Sec. 2, Ch. 544, L. 1983; amd. Sec. 1, Ch. 460, L. 2007.

37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1744.

(2) "Department" means the department of labor and industry.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves diagnoses and the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services;

(f) research or teaching related to social work; and

(g) administering, evaluating, and assessing tests if the licensee is qualified to administer the test and make the evaluation and assessment.

History: En. Sec. 3, Ch. 544, L. 1983; amd. Sec. 18, Ch. 572, L. 1985; amd. Sec. 129, Ch. 483, L. 2001; amd. Sec. 1, Ch. 199, L. 2009.

Cross-References

Professional counseling, Title 37, ch. 23.

Part 2

Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board. The board:

(1) shall recommend prosecutions for violations of 37-22-411, 37-23-311, and Title 37, chapter 37, to the attorney general or the appropriate county attorney, or both;

(2) shall meet at least once every 3 months to perform the duties described in Title 37, chapters 1, 23, and 37 and this chapter. The board may, once a year by a consensus of board members, determine that there is no necessity for a board meeting.

(3) shall adopt rules that set professional, practice, and ethical standards for social workers, marriage and family therapists, and professional counselors and other rules as may be reasonably necessary for the administration of chapters 23 and 37 and this chapter; and

(4) may adopt rules governing the issuance of licenses of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a license is issued.

History: En. Sec. 4, Ch. 544, L. 1983; amd. Sec. 64, Ch. 467, L. 2005; amd. Sec. 6, Ch. 403, L. 2009.

Cross-References

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3

Licensing

Part Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prescribed by the board.

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who fails the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board.

(5) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(6) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied.

History: En. Sec. 6, Ch. 544, L. 1983; amd. Sec. 1, Ch. 78, L. 1987; amd. Sec. 1, Ch. 552, L. 1993; amd. Sec. 65, Ch. 467, L. 2005; amd. Sec. 5, Ch. 460, L. 2007.

37-22-302. Fees. Each applicant for a license shall, upon submitting an application to the board, pay an application fee set by the board.

History: En. Sec. 7, Ch. 544, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 66, Ch. 467, L. 2005.

37-22-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 8, Ch. 544, L. 1983; amd. Sec. 2, Ch. 78, L. 1987.

37-22-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 544, L. 1983; amd. Sec. 2, Ch. 552, L. 1993; amd. Sec. 75, Ch. 429, L. 1995; amd. Sec. 30, Ch. 271, L. 2003.

37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

(b) activities, services, and use of an official title by a person in the employ of or under a contract with a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services by a person who is not a resident of this state that are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activities and services. However, the person shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activities and services in the state of former residence.

History: En. Sec. 5, Ch. 544, L. 1983; amd. Sec. 3, Ch. 552, L. 1993.

37-22-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 552, L. 1993.

37-22-307 through 37-22-310 reserved.

37-22-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 544, L. 1983.

37-22-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 544, L. 1983; amd. Sec. 4, Ch. 552, L. 1993.

Part 4
Regulation

37-22-401. Privileged communications — exceptions. A licensee may not disclose any information the licensee acquires from clients consulting the licensee in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 544, L. 1983; amd. Sec. 1388, Ch. 56, L. 2009.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-22-402 through 37-22-410 reserved.

37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent to the public that the person is a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or be fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both fine and imprisonment.

History: En. Sec. 13, Ch. 544, L. 1983; amd. Sec. 1389, Ch. 56, L. 2009.

CHAPTER 23
PROFESSIONAL COUNSELING

Part 1 — General

37-23-101. Purpose.
37-23-102. Definitions.
37-23-103. Repealed.

Part 2 — Licensing

37-23-201. Representation or practice as licensed clinical professional counselor — license required.
37-23-202. Licensure requirements.
37-23-203. Display of license.

37-23-204. Repealed.
37-23-205. Repealed.
37-23-206. Fees.
37-23-207. Repealed.
37-23-208. Terminated.
37-23-209 and 37-23-210 reserved.
37-23-211. Repealed.
37-23-212. Repealed.

Part 3 — Regulation—Penalties

37-23-301. Privileged communications — exceptions.
37-23-302 through 37-23-310 reserved.
37-23-311. Misdemeanor violations — penalties.

Chapter Cross-References

Liability of mental health professionals, Title 27, ch. 1, part 11.
Duty to warn of violent behavior, 27-1-1102.
Disability insurance — freedom of choice in selection of practitioners, 33-22-111.
Child abuse and neglect — reports and investigations — penalty, Title 41, ch. 3, part 2.
Abuse or neglect of elderly or persons with developmental disabilities — duty to report, 52-3-811.

Part 1
General

37-23-101. Purpose. (1) The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by:

(a) ensuring the ethical, qualified, and professional practice of professional counseling; and

(b) instituting an effective mechanism for obtaining accurate public information regarding an applicant's criminal background:

(i) to prevent convicted criminal offenders who committed crimes relevant to working with children, the elderly, the mentally ill, or other vulnerable persons from obtaining a Montana professional counseling license as an attempt to gain access to and perpetrate crimes against new victims; and

(ii) to protect the state from claims of negligence.

(2) This chapter and the rules promulgated by the board under 37-22-201 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

History: En. Sec. 1, Ch. 572, L. 1985; amd. Sec. 67, Ch. 467, L. 2005; amd. Sec. 3, Ch. 460, L. 2007.

37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1744.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means the therapeutic process of:

(i) conducting assessments and diagnoses for the purpose of establishing treatment goals and objectives; or

(ii) planning, implementing, and evaluating treatment plans that use treatment interventions to facilitate human development and to identify and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(b) assessment, which means selecting, administering, scoring, and interpreting instruments, including psychological tests, evaluations, and assessments, designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) counseling treatment intervention, which means those cognitive, affective, behavioral, and systemic counseling strategies, techniques, and methods common to the behavioral sciences that are specifically implemented in the context of a therapeutic relationship. Other treatment interventions include developmental counseling, guidance, and consulting to facilitate normal growth and development, including educational and career development.

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of the judgment, and communicating as requested or considered appropriate with the referral sources.

History: En. Sec. 2, Ch. 572, L. 1985; amd. Sec. 1, Ch. 536, L. 1995; amd. Sec. 2, Ch. 453, L. 2009.

Cross-References

Social work, Title 37, ch. 22.

37-23-103. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 3, Ch. 572, L. 1985; amd. Sec. 76, Ch. 429, L. 1995.

Part 2
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-23-201. Representation or practice as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor" or "professional counselor".

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters "LPC" or "LCPC" after the person's name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person's licensure or certification and the code of ethics of the person's profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person's training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person's former residence;

(g) an activity or service of a person who is working to satisfactorily complete the 3,000 hours of counseling practice required for licensure by 37-23-202(1)(b) if the person has already completed a planned graduate program, as required by 37-23-202(1)(a), or is working to complete the 3,000 hours of social work experience as required by 37-22-301; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person's license and the code of ethics of the person's profession.

History: En. Sec. 4, Ch. 572, L. 1985; amd. Sec. 9, Ch. 552, L. 1993; amd. Sec. 2, Ch. 536, L. 1995; amd. Sec. 12, Ch. 507, L. 1997; amd. Sec. 4, Ch. 23, L. 2001; amd. Sec. 130, Ch. 483, L. 2001.

37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily:

(a) completed a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum that resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) completed 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) passed an examination prepared and administered by:

(i) the national board of certified counselors; or

(ii) the national academy of certified clinical mental health counselors; and

(d) completed an application.

(2) The board shall provide by rule for licensure of a person who possesses a graduate degree that consists of a minimum of 45 semester hours primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years.

(3) As a prerequisite to the issuance of a license, the board shall require the applicant to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation as provided in 37-1-307.

(4) If an applicant has a history of criminal convictions, then pursuant to 37-1-203, the applicant has the opportunity to demonstrate to the board that the applicant is sufficiently rehabilitated to warrant the public trust, and if the board determines that the applicant is not, the license may be denied.

History: En. Sec. 5, Ch. 572, L. 1985; amd. Sec. 3, Ch. 78, L. 1987; amd. Sec. 1, Ch. 197, L. 1993; amd. Sec. 10, Ch. 552, L. 1993; amd. Sec. 77, Ch. 429, L. 1995; amd. Sec. 68, Ch. 467, L. 2005; amd. Sec. 6, Ch. 460, L. 2007.

37-23-203. Display of license. The license received pursuant to 37-23-202 must be displayed in the registrant's place of business or employment.

History: En. Sec. 7, Ch. 572, L. 1985; amd. Sec. 29, Ch. 492, L. 1997; amd. Sec. 69, Ch. 467, L. 2005.

37-23-204. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 572, L. 1985.

37-23-205. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 572, L. 1985; amd. Sec. 5, Ch. 552, L. 1993; amd. Sec. 78, Ch. 429, L. 1995; amd. Sec. 30, Ch. 492, L. 1997; amd. Sec. 31, Ch. 271, L. 2003.

37-23-206. Fees. Each applicant for a license shall, upon submitting an application to the board, pay an application fee set by the board.

History: En. Sec. 6, Ch. 572, L. 1985; amd. Sec. 70, Ch. 467, L. 2005.

37-23-207. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 552, L. 1993.

37-23-208. Terminated. Sec. 4, Ch. 278, L. 1997.

History: En. Sec. 1, Ch. 278, L. 1997.

37-23-209 and 37-23-210 reserved.

37-23-211. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 572, L. 1985.

37-23-212. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 572, L. 1985; amd. Sec. 6, Ch. 552, L. 1993.

Part 3
Regulation — Penalties

37-23-301. Privileged communications — exceptions. A licensee may not disclose any information the licensee acquires from clients consulting the licensee in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of that crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 572, L. 1985; amd. Sec. 1390, Ch. 56, L. 2009.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-23-302 through 37-23-310 reserved.

37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) engage in the practice of professional counseling, except as provided in 37-23-201(4);

(b) represent that the person is a licensed professional counselor without being licensed under this chapter;

(c) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(d) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both fine and imprisonment.

History: En. Sec. 13, Ch. 572, L. 1985; amd. Sec. 3, Ch. 536, L. 1995.

CHAPTER 24
OCCUPATIONAL THERAPY

Part 1 — General Provisions

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37-24-304. Repealed.
37-24-305. Repealed.
37-24-306. Issuance of license.
37-24-307. Repealed.
37-24-308. Repealed.
37-24-309. Repealed.
37-24-310. Fees.
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Part 1
General Provisions

37-24-101. Short title. This chapter may be cited as the "Occupational Therapy Practice Act".

History: En. Sec. 1, Ch. 629, L. 1985.

37-24-102. Purpose. The legislature declares that it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services in order to:

(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

History: En. Sec. 2, Ch. 629, L. 1985.

37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1749.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the national board for certification in occupational therapy, inc., and adopted by the board.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the therapeutic use of purposeful goal-directed activities and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by disease or disorders, impairments, activity limitations, or participation restrictions that interfere with the individual's ability to function independently in daily life roles. The practice encompasses evaluation, assessment, treatment, consultation, remediation, and restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work or productive activities, including instrumental activities of daily living, and play and leisure activities;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying orthotic or prosthetic devices, applying and training in the use of assistive technology, and training in the use of orthotic and prosthetic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adaptation of task, process, or the environment, as well as teaching of compensatory techniques, in order to enhance performance;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) application of physical agent modalities, as defined in this section, as an adjunct to or in preparation for engagement in purposeful goal-directed activity;

(l) promoting health and wellness;

(m) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;

(n) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;

(o) consulting with groups, programs, organizations, or communities to provide population-based services; and

(p) use of prescribed topical medications.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Occupational therapy assistant" means a person who is licensed to assist in the practice of occupational therapy under this chapter and who works under the general supervision of an occupational therapist.

(8) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(9) "Purposeful goal-directed activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

(10) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-24-108(2) for which a prescription is required under state or federal law.

History: En. Sec. 3, Ch. 629, L. 1985; amd. Sec. 1, Ch. 35, L. 1991; amd. Sec. 1, Ch. 297, L. 1993; amd. Sec. 131, Ch. 483, L. 2001; amd. Sec. 1, Ch. 101, L. 2003.

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which the person is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent to the public that the person is an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates the person's status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the national board for certification in occupational therapy, inc. (NBCOT); or

(7) a person employed as an occupational therapy aide.

History: En. Sec. 4, Ch. 629, L. 1985; amd. Sec. 1, Ch. 325, L. 1989; amd. Sec. 74, Ch. 114, L. 2003.

37-24-105. Use of superficial physical agent modalities. (1) Except as provided in subsection (2), a person may not use occupational therapy techniques involving superficial physical agent modalities unless the person:

(a) is a licensed occupational therapist under this chapter;

(b) limits application of superficial agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand; and

(c) has successfully completed 16 hours of instruction or training in superficial physical agent modalities and documents competency, as approved by the board, in the following areas:

(i) principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modalities;

(ii) physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of selected modalities;

(iii) the response of normal and abnormal tissue to the application of selected modalities;

(iv) indications and contraindications related to the selection and application of the modality;

(v) guidelines for the treatment or administration of the modality within the philosophical framework of occupational therapy;

(vi) guidelines for educating the patient, including information about risks and benefits of the occupational therapy techniques;

(vii) safety rules and precautions related to the selected modalities;

(viii) methods for documenting the effectiveness and immediate and long-term effects of treatment in relation to task-oriented activities; and

(ix) characteristics of and guidelines for the use of therapy equipment, including safe operation, adjustment, and care and maintenance of the equipment.

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply superficial physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

History: **En. Sec. 2, Ch. 297, L. 1993.**

37-24-106. Use of sound and electrical physical agent modalities. (1) Except as provided in subsection (2), a person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

(a) is licensed under this chapter;

(b) limits application of sound and electrical physical agent modalities to the shoulder, arm, elbow, forearm, wrist, or hand to restore and enhance upper extremity function; and

(c) (i) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

(ii) has successfully completed 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in sound physical agent modality devices and 20 hours of instruction or training and five proctored treatments under the direct supervision of a licensed medical practitioner in electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply deep physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

History: **En. Sec. 3, Ch. 297, L. 1993; amd. Sec. 2, Ch. 101, L. 2003.**

37-24-107. Use of occupational therapy techniques involving topical medications. A person may not utilize occupational therapy techniques involving topical medications as described in 37-24-108 unless the person has successfully completed the following hours of instruction in addition to those provided for in 37-24-106:

(1) 5 hours of instruction or training in pharmacology as it pertains to topical medications listed in 37-24-108(2);

(2) one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner; and

(3) (a) two proctored treatments in phonophoresis under the direct supervision of a licensed medical practitioner; or

(b) three proctored treatments of iontophoresis under the direct supervision of a licensed medical practitioner.

History: **En. Sec. 3, Ch. 101, L. 2003.**

37-24-108. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed occupational therapist who meets the requirements of 37-24-106 may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process in which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process in which topical medications are applied through the use of ultrasound.

(2) A licensed occupational therapist may apply or administer the following topical medications:

(a) bactericidal agents;
(b) debriding agents;
(c) anesthetic agents;
(d) anti-inflammatory agents;
(e) antispasmodic agents; and
(f) adrenocorticosteroids.

(3) (a) Topical medications applied or administered by a licensed occupational therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized

to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321.

(b) Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) A licensed occupational therapist who applies or administers topical medications shall keep appropriate records with respect to those medications.

History: En. Sec. 4, Ch. 101, L. 2003.

37-24-109. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall adopt written protocols for each class of topical medication listed in 37-24-108(2) for which a prescription is required by state or federal law. Protocols must include a description of each topical medication, its actions, indications, and contraindications, and the proper procedure and technique for its application or administration.

History: En. Sec. 5, Ch. 101, L. 2003.

Part 2
Board of Occupational Therapy Practice

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Oath defined, 1-1-201.
Seal defined, 1-4-201.
Oaths, Title 1, ch. 6.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Power of hearings officer to issue subpoenas, 2-4-611.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Preservation of records, Title 22, ch. 3, part 2.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Licensing investigation and review — record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-24-201. Organization — general rulemaking power. (1) The board of occupational therapy practice shall meet annually and elect a presiding officer and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include rules that are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

History: En. Sec. 6, Ch. 629, L. 1985; amd. Sec. 28, Ch. 492, L. 2001.

37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter; and

(c) adopt a seal by which the board shall authenticate board proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the presiding officer or secretary of the board and stamped with the seal, is prima facie evidence of the validity of the document.

History: En. Sec. 7, Ch. 629, L. 1985; amd. Sec. 79, Ch. 429, L. 1995; amd. Sec. 71, Ch. 467, L. 2005.

37-24-203. Compensation and expenses. Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 8, Ch. 629, L. 1985.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-24-301. License required. (1) (a) A person may not hold out to the public that the person is an occupational therapist or is able to practice occupational therapy or able to render occupational therapy services in this state unless the person is licensed as an occupational therapist under the provisions of this chapter.

(b) A person may not practice or hold out to the public that the person is an occupational therapy assistant in this state unless the person is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: En. Sec. 9, Ch. 629, L. 1985; amd. Sec. 1391, Ch. 56, L. 2009.

37-24-302. Application. An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) through (1)(c).

History: En. Sec. 10, Ch. 629, L. 1985; amd. Sec. 2, Ch. 325, L. 1989.

37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where the person completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the national board for certification in occupational therapy, inc. (NBCOT); and

(d) pass an examination prescribed by the board.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

History: En. Sec. 11, Ch. 629, L. 1985; amd. Sec. 3, Ch. 325, L. 1989; amd. Sec. 75, Ch. 114, L. 2003; amd. Sec. 72, Ch. 467, L. 2005.

37-24-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, Ch. 629, L. 1985.

37-24-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 629, L. 1985; amd. Sec. 4, Ch. 325, L. 1989.

37-24-306. Issuance of license. (1) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

History: En. Sec. 14, Ch. 629, L. 1985.

37-24-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, Ch. 629, L. 1985.

37-24-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 16, Ch. 629, L. 1985; amd. Sec. 80, Ch. 429, L. 1995; amd. Sec. 32, Ch. 271, L. 2003.

37-24-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 629, L. 1985; amd. Sec. 5, Ch. 325, L. 1989.

37-24-310. Fees. The board may adopt fees in accordance with 37-1-134 for:

(1) applications for licensure;
(2) initial license issuance; and
(3) limited permit issuance.

History: En. Sec. 18, Ch. 629, L. 1985; amd. Sec. 73, Ch. 467, L. 2005.

37-24-311. Penalty. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

History: En. Sec. 19, Ch. 629, L. 1985.

CHAPTER 25
NUTRITIONISTS

Part 1 — General

37-25-101. Legislative finding and purpose.
37-25-102. Definitions.

Part 2 — Board of Medical Examiners

37-25-201. Powers and duties of board.

Part 3 — Licensing

37-25-301. Scope of dietetic-nutrition practice.
37-25-302. Licensing requirements.
37-25-303. Issuance of license.
37-25-304. Exemptions from licensure requirements.
37-25-305. Representation to public as nutritionist — limitation on use of title.
37-25-306. Repealed.
37-25-307. Repealed.
37-25-308. Grounds for revocation, suspension, or refusal to renew license.

Part 1
General

Part Cross-References

Montana Access to Food and Nutrition Act, Title 50, ch. 49, part 1.

37-25-101. Legislative finding and purpose. The legislature finds and declares that the practice of nutrition assessment and counseling affects the public health, safety, and welfare. It is the purpose of this chapter to provide for the licensing and regulation of nutritionists in order to protect the public health, safety, and welfare, to ensure that nutritional services of high quality are available to the people of Montana, and to provide a means of identifying those qualified to practice nutrition.

History: En. Sec. 1, Ch. 529, L. 1987.

37-25-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

(4) "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

(5) "General nutritional information" means information on:

(a) principles of good nutrition;

(b) foods to be included in a daily diet;

(c) the essential nutrients needed by the body;

(d) recommended amounts of these nutrients;

(e) the action of these nutrients on the body;

(f) the effects of deficiencies in these nutrients; or

(g) foods and supplements that are good sources of essential nutrients.

(6) "Licensed nutritionist" means a nutritionist licensed under this chapter.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to

determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

(a) the nutrition assessment;

(b) the composition of food and other sources of nutrients; and

(c) meal preparation consistent with cultural background and socioeconomic status.

(9) "Nutritionist" means:

(a) a person licensed under this chapter; or

(b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university.

History: En. Sec. 2, Ch. 529, L. 1987; amd. Sec. 48, Ch. 83, L. 1989.

Part 2
Board of Medical Examiners

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Oath defined, 1-1-201.
Seal defined, 1-4-201.
Oaths, Title 1, ch. 6.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Power of hearings officer to issue subpoenas, 2-4-611.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Preservation of records, Title 22, ch. 3, part 2.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Licensing investigation and review — record access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-25-201. Powers and duties of board. In addition to all other powers and duties conferred and imposed on the board by Title 37, chapter 1, and this chapter, the board shall adopt rules that set professional, practice, and ethical standards for licensed nutritionists and other rules as may be necessary for the administration of this chapter.

History: En. Sec. 10, Ch. 529, L. 1987; amd. Sec. 74, Ch. 467, L. 2005.

Part 3
Licensing

Part Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Duty of Department to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt and enforce licensing and certification rules and rules on conduct, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:

(1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;

(2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;

(3) providing nutrition counseling for any individual;
(4) developing, implementing, and managing nutrition care systems; and
(5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

History: En. Sec. 3, Ch. 529, L. 1987.

37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that the person is registered by the commission.
(2) An applicant shall pay an application fee set by the board.

History: En. Sec. 4, Ch. 529, L. 1987; amd. Sec. 1392, Ch. 56, L. 2009.

37-25-303. Issuance of license. Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

History: En. Sec. 5, Ch. 529, L. 1987; amd. Sec. 34, Ch. 109, L. 2009.

37-25-304. Exemptions from licensure requirements. This chapter does not prevent:
(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent to the public that the individual is a nutritionist;
(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of that profession;
(3) a person licensed under any other law from engaging in the profession or business for which the person is licensed if the person does not represent to the public that the person is a nutritionist;
(4) an educator or adviser employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of the individual's salaried position;
(5) a person employed by or under contract with an agency of the state or federal government from discharging an official duty if the person does not represent to the public that the person is a nutritionist;
(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if the person does not represent to the public that the person is a nutritionist;
(7) a person from furnishing general nutrition information or disseminating literature if the person does not represent to the public that the person is a dietitian or a nutritionist; or
(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if the person does not represent to the public that the person is a nutritionist.

History: En. Sec. 6, Ch. 529, L. 1987; amd. Sec. 1393, Ch. 56, L. 2009.

37-25-305. Representation to public as nutritionist — limitation on use of title. A person may not represent to the public by any title, sign, or advertisement or description of services that the person is a nutritionist or a licensed nutritionist unless the person has been licensed under this chapter or has met the requirements of 37-25-102(9)(b).

History: En. Sec. 7, Ch. 529, L. 1987; amd. Sec. 157, Ch. 42, L. 1997.

37-25-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 529, L. 1987.

37-25-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 529, L. 1987; amd. Sec. 1, Ch. 255, L. 1991; amd. Sec. 81, Ch. 429, L. 1995; amd. Sec. 31, Ch. 492, L. 1997; amd. Sec. 33, Ch. 271, L. 2003.

37-25-308. Grounds for revocation, suspension, or refusal to renew license. The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has:
(1) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(2) engaged in unprofessional conduct or gross incompetence as defined by rule of the board;

(3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition; or

(4) violated an order or rule of the board.

History: En. Sec. 11, Ch. 529, L. 1987.

CHAPTER 26
NATUROPATHIC PHYSICIANS

Part 1 — General

37-26-101. Short title.
37-26-102. Legislative finding — purpose.
37-26-103. Definitions.

Part 2 — Alternative Health Care Board

37-26-201. Powers and duties of board.
37-26-202. Board meetings.

Part 3 — Scope of Practice

37-26-301. Practice of naturopathic health care — alternative health care formulary committee.
37-26-302. Exemptions.
37-26-303. Public health duties of naturopathic physicians.
37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements.

Part 4 — Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice.
37-26-402. Qualifications for licensure.
37-26-403. Application for licensure.
37-26-404. Repealed.
37-26-405. Issuance of license.
37-26-406 and 37-26-407 reserved.
37-26-408. Repealed.
37-26-409. Repealed.
37-26-410. Repealed.
37-26-411 through 37-26-413 reserved.
37-26-414. Enforcement — penalty.

Chapter Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Duty of Department to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt and enforce licensing and certification rules and rules on conduct, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

Part 1
General

37-26-101. Short title. This chapter may be cited as the "Naturopathic Health Care Practice Act".

History: En. Sec. 1, Ch. 306, L. 1991.

37-26-102. Legislative finding — purpose. (1) The legislature finds that a significant number of Montanans choose naturopathic medicine for their health care needs and declares that naturopathic medicine is a distinct health care profession that affects the public health, safety, and welfare and contributes to public freedom of choice in health care.

(2) The purpose of this chapter is to provide standards for the licensing and regulation of naturopathic physicians in order to protect the public health, safety, and welfare; to ensure that

naturopathic health care by qualified naturopathic physicians is available to the people of Montana; and to provide a means of identifying qualified naturopathic physicians.

History: **En. Sec. 2, Ch. 306, L. 1991.**

37-26-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1730.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) (a) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules.

(b) The term does not include a forceps delivery, general or spinal anesthesia, or a cesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials.

History: **En. Sec. 3, Ch. 306, L. 1991; amd. sec. 3(2), Ch. 524, L. 1991; amd. Sec. 132, Ch. 483, L. 2001.**

Part 2
Alternative Health Care Board

37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(4) adopt rules that set nonrefundable fees for application, and licensure;

(5) approve naturopathic medical colleges as defined in 37-26-103;

(6) issue certificates of specialty practice;

(7) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery allowed under 37-26-301; and

(8) adopt rules that contain the natural substance formulary list created by the alternative health care formulary committee provided for in 37-26-301.

History: En. Sec. 10, Ch. 306, L. 1991; amd. Sec. 3, Ch. 314, L. 1993; amd. Sec. 82, Ch. 429, L. 1995; amd. Sec. 23, Ch. 481, L. 1997; amd. Sec. 34, Ch. 271, L. 2003; amd. Sec. 75, Ch. 467, L. 2005; amd. Sec. 19, Ch. 502, L. 2007.

37-26-202. Board meetings. (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

History: En. Sec. 11, Ch. 306, L. 1991; amd. Sec. 4, Ch. 314, L. 1993; amd. Sec. 29, Ch. 492, L. 2001.

Part 3
Scope of Practice

37-26-301. Practice of naturopathic health care — alternative health care formulary committee. (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(m), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug, as defined in 50-31-301, except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies, as well as drugs on the natural substance formulary list provided for in subsection (3):

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) A five-member alternative health care formulary committee appointed by the board shall establish a natural substance formulary list. The committee consists of a licensed pharmacist plus four members of the board, two of whom must be licensed naturopathic physicians, one who must be a licensed medical doctor, and one who must be a public member. The list may not go beyond the scope of substances covered by approved naturopathic college curricula or continuing education and must be reviewed annually by the committee. Changes to the list that are recommended by the committee and accepted by the board must be published as administrative rules.

(4) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(5) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by

subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable.

History: En. Sec. 4, Ch. 306, L. 1991; amd. Sec. 5, Ch. 314, L. 1993; amd. Sec. 24, Ch. 481, L. 1997; amd. Sec. 26, Ch. 224, L. 2003.

37-26-302. Exemptions. (1) This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter.

(2) This chapter does not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

History: En. Sec. 6, Ch. 306, L. 1991.

37-26-303. Public health duties of naturopathic physicians. Naturopathic physicians have the same authority and responsibility as other licensed physicians with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice described in this chapter.

History: En. Sec. 8, Ch. 306, L. 1991.

37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements. (1) A naturopathic physician may not practice naturopathic childbirth attendance without first obtaining from the board a certificate of specialty practice. The board shall adopt rules setting forth the requirements to be met in order to certify naturopathic physicians for the specialty practice of naturopathic childbirth attendance.

(2) In order to be certified for the specialty practice of naturopathic childbirth attendance, a naturopathic physician shall:

(a) pass either a national standardized supplemental examination in naturopathic childbirth attendance provided by the national naturopathic profession licensing organization or another specialty examination approved by the board;

(b) complete a minimum of 100 hours in any one or in any combination of the following upon approval by the board:

(i) course work in naturopathic childbirth attendance;

(ii) an internship in naturopathic childbirth attendance; or

(iii) a preceptorship in naturopathic childbirth attendance; and

(c) have assisted in a minimum of 50 supervised births, including prenatal and postnatal care, under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics or natural childbirth attendance. The 50 supervised births required under this subsection (c) must include 25 births that document the naturopathic physician as the primary birth attendant.

History: En. Sec. 7, Ch. 306, L. 1991.

Part 4
Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(2) (a) A naturopathic physician licensed under this chapter may use the prefix "Dr." or "doctor" as a title.

(b) Only a naturopathic physician licensed under this chapter may use any of the following titles or terms:

(i) "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic physician", and the abbreviation "N.D." when used to imply any of these titles; or

(ii) "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent the person or the person's practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board.

History: En. Sec. 5, Ch. 306, L. 1991; amd. Sec. 1394, Ch. 56, L. 2009.

37-26-402. Qualifications for licensure. A person is qualified to be licensed to practice naturopathic medicine in Montana if the person:

(1) is of good moral character as determined by the board;

(2) is a graduate of an approved naturopathic medical college; and

(3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians.

History: En. Sec. 12, Ch. 306, L. 1991; amd. Sec. 1395, Ch. 56, L. 2009.

37-26-403. Application for licensure. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department.

(2) The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the department may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be a basis for licensure denial.

(3) At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the department's investigation.

History: En. Sec. 13, Ch. 306, L. 1991; amd. Sec. 83, Ch. 429, L. 1995; amd. Sec. 76, Ch. 467, L. 2005; amd. Sec. 20, Ch. 502, L. 2007.

37-26-404. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 306, L. 1991; amd. Sec. 6, Ch. 314, L. 1993.

37-26-405. Issuance of license. If the board determines that an applicant possesses the qualifications required by 37-26-402, the department shall issue a license to the applicant to practice naturopathic medicine.

History: En. Sec. 15, Ch. 306, L. 1991.

37-26-406 and 37-26-407 reserved.

37-26-408. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 306, L. 1991.

37-26-409. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, Ch. 306, L. 1991.

37-26-410. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 18, Ch. 306, L. 1991.

37-26-411 through 37-26-413 reserved.

37-26-414. Enforcement — penalty. (1) A county attorney shall prosecute a person charged with violation of any of the provisions of this chapter.

(2) A person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine not exceeding $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 19, Ch. 306, L. 1991.

CHAPTER 27

DIRECT-ENTRY MIDWIFERY

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Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Part 1
General

37-27-101. Short title. This chapter may be cited as the "Direct-Entry Midwifery Licensing Act".

History: En. Sec. 1, Ch. 550, L. 1991.

37-27-102. Purpose. The legislature finds and declares that because the practice of direct-entry midwifery affects the lives of the people of this state and because some Montanans may exercise their right to give birth where and with whom they choose, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of direct-entry midwifery.

History: En. Sec. 2, Ch. 550, L. 1991.

37-27-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under this chapter.

(2) "Board" means the alternative health care board established in 2-15-1730.

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

(5) "Licensee" means a person authorized by this chapter to practice direct-entry midwifery.

(6) "Postpartum period" means the period up to 6 weeks following birth.

(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

History: En. Sec. 3, Ch. 550, L. 1991; amd. Sec. 3, Ch. 524, L. 1991; amd. Sec. 59, Ch. 10, L. 1993.

37-27-104. Exemptions. This chapter does not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of direct-entry midwifery does not constitute the practice of medicine, certified nurse-midwifery, or emergency medical care to the extent that a direct-entry midwife advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period when the pregnancy is not a high-risk pregnancy.

History: En. Sec. 4, Ch. 550, L. 1991.

37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in Title 37, chapter 1, and this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules may include but are not limited to:

(a) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(b) the development of eligibility criteria for client screening by direct-entry midwives to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(c) the development of standardized informed consent and reporting forms;

(d) the adoption of ethical standards for licensed direct-entry midwives;

(e) the adoption of supporting documentation requirements for primary birth attendants; and

(f) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201.

History: En. Sec. 6, Ch. 550, L. 1991; amd. Sec. 84, Ch. 429, L. 1995; amd. Sec. 27, Ch. 224, L. 2003; amd. Sec. 35, Ch. 271, L. 2003; amd. Sec. 77, Ch. 467, L. 2005.

37-27-106 through 37-27-110 reserved.

37-27-111. Parents' rights regarding birth of baby. Except as otherwise provided by law, parents have a right to give birth where and with whom they choose.

History: En. Sec. 1, Ch. 493, L. 1989. Sec. 37-75-101, MCA 1989; redes. 37-27-111 by Code Commissioner, 1991.

Part 2
Licensure

37-27-201. Qualifications of applicants for license — educational and practical experience requirements. To be eligible for a license as a direct-entry midwife, an applicant:

(1) must possess a high school diploma or its equivalent;

(2) must be of good moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to the following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(h) special requirements for home birth;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs authorized in 37-27-302;

(4) shall acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide practical experience. At a minimum, this experience must include the following types and numbers of experiences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of which included continuous care, as evidenced by:

(i) birth certificates from Montana or another state;

(ii) a signed affidavit from the birthing mother; or

(iii) documented records from the person who supervised the births;

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification must be current at the time of application and remain valid throughout the license period; and

(6) shall file documentation with the board that the applicant has been certified by the American academy of pediatrics or the American heart association to perform neonatal resuscitation. The applicant's certification must be current at the time of application and remain valid throughout the license period.

History: En. Sec. 7, Ch. 550, L. 1991; amd. Sec. 7, Ch. 314, L. 1993; amd. Sec. 14, Ch. 230, L. 1999.

37-27-202. Examination — preparation — requirements. (1) An examination for a license to practice direct-entry midwifery must be prepared by a national testing agency approved by the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) In order to be licensed, a person must attain a passing grade on the examination, as set by the board.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery.

History: En. Sec. 10, Ch. 550, L. 1991; amd. Sec. 8, Ch. 314, L. 1993; amd. Sec. 28, Ch. 224, L. 2003.

37-27-203. Examination — exemption. (1) Except as provided in subsection (4), an applicant for a license as a direct-entry midwife shall pass a qualifying, written examination, prescribed by the board, that is designed to test knowledge of theory regarding pregnancy and childbirth and to test clinical judgment in midwifery management. If considered necessary, an oral interview may be conducted in addition to the written examination to determine the fitness of the applicant to practice as a direct-entry midwife.

(2) Before an applicant may take the examination, the applicant shall demonstrate to the board that the educational and practical experience requirements in 37-27-201(3) and (4) have been met.

(3) An applicant is exempt from the educational and practical experience requirements of 37-27-201(3) and (4) if the applicant has:

(a) satisfactorily completed the first examination given by the board following July 1, 1991; and

(b) filed supporting documentation, as required by the board by rule, certifying that the applicant has served as the primary birth attendant, providing continuous care at no less than 75 births within the 7 years prior to July 1, 1991, as verified by birth certificates from Montana or another state, a signed affidavit from the birthing mother, or documented records from the midwife.

(4) Upon payment of the license fee established by the board, a nurse-midwife certified pursuant to 37-8-409 is exempt from the requirements of 37-27-201 and this section and may be licensed as a direct-entry midwife.

History: En. Sec. 8, Ch. 550, L. 1991; amd. Sec. 9, Ch. 314, L. 1993.

37-27-204 reserved.

37-27-205. Provisional license — apprentice license. (1) Upon payment of a $200 fee to the department of labor and industry, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a licensed physician, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

(2) An apprentice direct-entry midwife license is valid for a period prescribed by department of labor and industry rule and must be renewed at an interval established by the department of labor and industry, with a limit of four renewals.

History: En. Sec. 9, Ch. 550, L. 1991; amd. Sec. 10, Ch. 314, L. 1993; amd. Sec. 32, Ch. 492, L. 1997; amd. Sec. 15, Ch. 230, L. 1999; amd. Sec. 133, Ch. 483, L. 2001.

37-27-206 through 37-27-209 reserved.

37-27-210. Fees. (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board.

(2) Before a license may be issued or renewed, an applicant shall pay a fee set by the board.

(3) Fees are nonrefundable.

History: En. Sec. 13, Ch. 550, L. 1991; amd. Sec. 11, Ch. 314, L. 1993; amd. Sec. 78, Ch. 467, L. 2005.

37-27-211 reserved.

37-27-212. Title restricted — enjoining unlawful practice. (1) A direct-entry midwife licensed under this chapter may use the term "licensed midwife" or "direct-entry midwife" as a title.

(2) Only a direct-entry midwife licensed under this chapter may use the title "licensed midwife" or "direct-entry midwife".

(3) The terms and titles in subsections (1) and (2) identify direct-entry midwives and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these terms and titles to represent the person or the person's practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(4) A violation of this chapter may be enjoined by the district court on petition by the board.

History: En. Sec. 12, Ch. 314, L. 1993.

37-27-213. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 550, L. 1991.

37-27-214 and 37-27-215 reserved.

37-27-216. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, Ch. 550, L. 1991.

Part 3
Regulation of Practice

37-27-301. Unlawful to practice without license. It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under this chapter.

History: En. Sec. 15, Ch. 550, L. 1991.

37-27-302. Administration of prescription drugs prohibited — exceptions. A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with administrative rules adopted by the department of public health and human services, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician.

History: En. Sec. 11, Ch. 550, L. 1991; amd. Sec. 42, Ch. 44, L. 2007.

37-27-303. Operative and surgical procedures prohibited — exception. A licensed direct-entry midwife may not perform any operative or surgical procedures except for an episiotomy and simple surgical repair of an episiotomy or simple second-degree lacerations.

History: En. Sec. 12, Ch. 550, L. 1991.

37-27-304 through 37-27-309 reserved.

37-27-310. Privileged communications — exceptions. A licensee may not disclose any information acquired from clients during consultation in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of the crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the client's interaction with the direct-entry midwife, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client;

(6) when the client is seeking emergency medical treatment and the client's history is requested by the attending medical professional; and

(7) as may otherwise be required by law.

History: En. Sec. 17, Ch. 550, L. 1991.

37-27-311. Informed consent. (1) Prior to accepting a woman for care, a licensed direct-entry midwife shall first obtain written, informed consent from the woman.

(2) Informed consent must be evidenced by a written statement, in a form prescribed by the board and signed by the direct-entry midwife and the woman to whom care is to be given, in which the direct-entry midwife certifies that full disclosure has been made and acknowledged by the woman on the following:

(a) the direct-entry midwife's educational background;

(b) the nature and scope of the care to be given, including the possibility of and procedure for transport of the patient to a hospital;

(c) the available alternatives to direct-entry midwifery care;

(d) a description of the risks of home birth, primarily those conditions that may arise during delivery;

(e) the fact that the patient has been advised to consult with a physician at least twice during the pregnancy;

(f) whether the midwifery services provided are located more than 50 miles from the nearest hospital; and

(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions.

History: En. Sec. 18, Ch. 550, L. 1991.

37-27-312. Screening procedures. In addition to meeting the eligibility criteria for client screening established by the board pursuant to 37-27-105, a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

(1) the standard serological test, as defined in 50-19-101, for women seeking prenatal care;

(2) screening for human immunodeficiency virus, when appropriate;

(3) maternal serum alpha-fetoprotein test and ultrasound, upon request;

(4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;

(5) nonstress testing by a fetal monitor of a fetus at greater than 42 $\frac{1}{2}$ weeks' gestation or if other reasons indicate the testing;

(6) screening for phenylketonuria;

(7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and

(8) screening for premature labor and other risk factors.

History: En. Sec. 20, Ch. 550, L. 1991; amd. Sec. 1, Ch. 351, L. 2001.

37-27-313 and 37-27-314 reserved.

37-27-315. Physician consultation advised. A licensed direct-entry midwife shall advise all women accepted for midwifery care to consult with a physician or certified nurse-midwife at least twice during the pregnancy.

History: En. Sec. 21, Ch. 550, L. 1991.

37-27-316 through 37-27-319 reserved.

37-27-320. Reports — failure to report. (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient who was given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of public health and human services any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license.

History: En. Sec. 19, Ch. 550, L. 1991; amd. Sec. 63, Ch. 418, L. 1995; amd. Sec. 92, Ch. 546, L. 1995.

37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-221, with the department of public health and human services.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter.

History: En. Sec. 22, Ch. 550, L. 1991; amd. Sec. 64, Ch. 418, L. 1995; amd. Sec. 1, Ch. 515, L. 1995; amd. Sec. 93, Ch. 546, L. 1995.

37-27-322 through 37-27-324 reserved.

37-27-325. Violation — penalties — injunction — manner of charging violation. (1) A person who violates any provision of this chapter or any rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Notwithstanding any other provisions of this chapter, the board may maintain an action to enjoin a person from engaging in the practice of direct-entry midwifery until a license to practice direct-entry midwifery is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing direct-entry midwifery without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing direct-entry midwifery without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of direct-entry midwifery while not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 23, Ch. 550, L. 1991.

CHAPTER 28
RESPIRATORY CARE PRACTITIONERS

Part 1 — General

37-28-101. Findings — purpose.
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37-28-202. Licensing requirements — examination — fees.

37-28-203. Repealed.
37-28-204 and 37-28-205 reserved.
37-28-206. Repealed.
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Part 3 — Miscellaneous

37-28-301. Repealed.
37-28-302. Penalty.
37-28-303 and 37-28-304 reserved.
37-28-305. Deposit of fees.

Part 1
General

37-28-101. Findings — purpose. The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.

History: En. Sec. 1, Ch. 532, L. 1991.

37-28-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of respiratory care practitioners established in 2-15-1750.

(2) "Qualified medical direction" means the direction of:

(a) a medical director of an inpatient or outpatient respiratory care service, a respiratory care department, or a home-care agency; or

(b) a licensed physician with a special interest and knowledge about the diagnosis and treatment of respiratory problems.

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnostic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

(4) "Respiratory care practitioner" means a person who has the knowledge and skill necessary to administer respiratory care and who is licensed under the provisions of part 2 of this chapter.

(5) "Student respiratory care practitioner" means a person:

(a) enrolled in a respiratory care educational program recognized by the joint review committee for respiratory therapy education and the American medical association's committee on allied health education and accreditation, or their successors;

(b) permitted to provide respiratory care under clinical supervision; and

(c) identified as a student respiratory care practitioner or "SRCP".

History: En. Sec. 2, Ch. 532, L. 1991.

37-28-103. Board meetings — procedure — seal. (1) (a) The board shall meet at least once a year. The board may convene at the request of the presiding officer or at other times the board determines necessary to transact its business.

(b) The governor shall designate the presiding officer of the board.

(2) The board shall adopt a seal by which the board may authenticate its documents.

History: En. Sec. 4, Ch. 532, L. 1991; amd. Sec. 30, Ch. 492, L. 2001.

37-28-104. Board powers and duties. (1) The board shall license, grant temporary permits, and renew the licenses or permits of duly qualified applicants.

(2) The board may adopt rules necessary to implement the provisions of this chapter.

History: En. Sec. 5, Ch. 532, L. 1991; amd. Sec. 79, Ch. 467, L. 2005.

Part 2
Licensure

37-28-201. License required — exceptions — respiratory care not the practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent to the public that the person is a respiratory care practitioner unless licensed under the provisions of this chapter.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not purport to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) This chapter may not be construed to permit the practice of medicine.

History: En. Sec. 6, Ch. 532, L. 1991; amd. Sec. 85, Ch. 429, L. 1995.

37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and an application demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board. The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP".

History: En. Sec. 7, Ch. 532, L. 1991; amd. Sec. 86, Ch. 429, L. 1995; amd. Sec. 80, Ch. 467, L. 2005.

37-28-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 8, Ch. 532, L. 1991; amd. Sec. 1, Ch. 392, L. 1993; amd. Sec. 87, Ch. 429, L. 1995; amd. Sec. 36, Ch. 271, L. 2003.

37-28-204 and 37-28-205 reserved.

37-28-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 532, L. 1991; amd. Sec. 2, Ch. 392, L. 1993.

37-28-207 through 37-28-209 reserved.

37-28-210. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 532, L. 1991.

Part 3
Miscellaneous

37-28-301. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 11, Ch. 532, L. 1991.

37-28-302. Penalty. A person convicted of violating any provision of this chapter, is guilty of a misdemeanor and shall be fined an amount not to exceed $500, or shall be imprisoned in a county jail for a term not to exceed 6 months, or both.
History: En. Sec. 12, Ch. 532, L. 1991.

37-28-303 and 37-28-304 reserved.

37-28-305. Deposit of fees. All fees and money received by the department must be deposited in the state special revenue fund for the board's use subject to 37-1-101(6).
History: En. Sec. 13, Ch. 532, L. 1991.

CHAPTER 29
DENTURITRY

Part 1 — General

37-29-101. Short title.
37-29-102. Definitions.
37-29-103. Association with dentists permitted.
37-29-104. Health insurance policies to include denturist services.
37-29-105. Applicability of other law.

Part 2 — Board of Dentistry

37-29-201. Board powers and duties.
37-29-202. Repealed.
37-29-203. Repealed.

Part 3 — Licensing

37-29-301. License to practice required.
37-29-302. Exceptions.
37-29-303. Application for license.
37-29-304. Repealed.
37-29-305. Repealed.
37-29-306. Licensing.
37-29-307 through 37-29-310 reserved.
37-29-311. Repealed.
37-29-312. Repealed.
37-29-313. Repealed.
37-29-314 through 37-29-320 reserved.
37-29-321. Repealed.

Part 4 — Regulation

37-29-401. Standards of conduct and practice.
37-29-402. Prohibitions.
37-29-403. Procedure for making and fitting partial denture.
37-29-404. Guarantee.
37-29-405. Advertising restrictions.
37-29-406 through 37-29-410 reserved.
37-29-411. Injunction.
37-29-412. Violation and penalty.

Chapter Cross-References
Dentistry and dental hygiene, Title 37, ch. 4.

Part 1
General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".
History: En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1732.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 524, L. 1987; amd. Sec. 134, Ch. 483, L. 2001.

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.

37-29-104. Health insurance policies to include denturist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

History: En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Insurance contract — policy provisions, Title 33, ch. 15, part 3.

Dentists performing services common to medicine and dentistry, 33-30-1011.

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: En. Sec. 12, Ch. 548, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Part 2
Board of Dentistry

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to form and display of licenses, license examination format, criteria and grading of examinations, and disciplinary standards for licensees.

History: En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985; amd. Sec. 88, Ch. 429, L. 1995; amd. Sec. 35, Ch. 109, L. 2009.

37-29-202. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.

37-29-203. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-29-301. License to practice required. A person shall hold a license for the practice of denturitry in order to perform the following acts:

(1) engaging or offering to engage in the practice of denturitry; or

(2) use in connection with the person's name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that the person is engaged in the practice of denturitry.

History: En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 16, Ch. 230, L. 1999.

37-29-302. Exceptions. The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that a denturist may not supervise more than one intern at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303.

History: En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 158, Ch. 42, L. 1997.

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets the following criteria and scores a passing grade on the examination for licensure:

(1) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(2) documentation that the applicant:

(a) has completed 1 year of internship under the direct supervision of a licensed denturist; or

(b) has 3 years of experience as a denturist under licensure in another state or Canada.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985; amd. Sec. 1, Ch. 245, L. 1991; amd. Sec. 89, Ch. 429, L. 1995.

37-29-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985; amd. Sec. 33, Ch. 492, L. 1997; amd. Sec. 29, Ch. 224, L. 2003.

37-29-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 159, Ch. 42, L. 1997; amd. Sec. 17, Ch. 230, L. 1999.

37-29-306. Licensing. (1) A denturist license is valid for a period established by department rule. A denturist shall submit proof that the denturist holds a current cardiopulmonary resuscitation card.

(2) An application must be submitted on a form furnished by the department. Each application must include all other documentation necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. An application must be accompanied by the appropriate fees.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985; amd. Sec. 49, Ch. 83, L. 1989; amd. Sec. 2, Ch. 245, L. 1991; amd. Sec. 90, Ch. 429, L. 1995; amd. Sec. 34, Ch. 492, L. 1997; amd. Sec. 37, Ch. 271, L. 2003; amd. Sec. 81, Ch. 467, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-29-307 through 37-29-310 reserved.

37-29-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

37-29-312. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.

37-29-313. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.

37-29-314 through 37-29-320 reserved.

37-29-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.

Part 4
Regulation

37-29-401. Standards of conduct and practice. Each denturist shall comply with the following standards of practice:

(1) Each licensed denturist shall carry a current cardiopulmonary resuscitation card.

(2) Teeth and materials used must meet American dental association standards.

(3) Nonmetal full dentures must be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 18, Ch. 230, L. 1999.

37-29-402. Prohibitions. No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities, except that a licensed denturist may apply tissue conditioning agents;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 245, L. 1991.

37-29-403. Procedure for making and fitting partial denture. (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

History: En. Sec. 15, Ch. 548, L. 1985; amd. Sec. 91, Ch. 429, L. 1995.

37-29-404. Guarantee. Denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 524, L. 1987; amd. Sec. 19, Ch. 230, L. 1999.

37-29-405. Advertising restrictions. A person may not represent or hold out to the public that the person is a denturist or is practicing denturitry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985; amd. Sec. 1396, Ch. 56, L. 2009.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.

CHAPTER 30
BARBERS
(Renumbered and Repealed)

Part 1 — General
(Repealed)

Part 2 — Board of Barbers
(Repealed)

Part 3 — Licensing—Certificates of Registration
(Repealed)

Part 4 — Licensing and Regulation of Barbershops and Schools
(Renumbered and Repealed)

Part 5 — Remedies for Violation
(Repealed)

Part 1
General
(Repealed)

37-30-101. Repealed. Sec. 23, Ch. 243, L. 2003.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981; amd. Sec. 1, Ch. 565, L. 1983; amd. Sec. 1, Ch. 274, L. 1985; amd. Sec. 135, Ch. 483, L. 2001; amd. Sec. 31, Ch. 492, L. 2001.

Part 2
Board of Barbers
(Repealed)

37-30-201. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407; amd. Sec. 1, Ch. 277, L. 1983.

37-30-202. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

37-30-203. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981; amd. Sec. 2, Ch. 565, L. 1983; amd. Sec. 2, Ch. 274, L. 1985; amd. Sec. 25, Ch. 481, L. 1997.

Part 3
Licensing — Certificates of Registration (Repealed)

37-30-301. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1); amd. Sec. 3, Ch. 565, L. 1983; amd. Sec. 3, Ch. 274, L. 1985; amd. Sec. 92, Ch. 429, L. 1995.

37-30-302. Repealed. Sec. 18, Ch. 565, L. 1983.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4); amd. Sec. 4, Ch. 565, L. 1983; amd. Sec. 4, Ch. 274, L. 1985.

37-30-304. Repealed. Sec. 8, Ch. 274, L. 1985.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981; amd. Sec. 5, Ch. 274, L. 1985; amd. Sec. 93, Ch. 429, L. 1995.

37-30-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 6, Ch. 565, L. 1983; amd. Sec. 6, Ch. 274, L. 1985.

37-30-307. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981; amd. Sec. 6, Ch. 390, L. 1983; amd. Sec. 5, Ch. 565, L. 1983; amd. Sec. 7, Ch. 274, L. 1985; amd. Sec. 94, Ch. 546, L. 1995; amd. Sec. 27, Ch. 472, L. 1997; amd. Sec. 26, Ch. 481, L. 1997.

37-30-308. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

37-30-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 544, L. 1981.

37-30-310. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 13, Ch. 565, L. 1983; amd. Sec. 35, Ch. 492, L. 1997.

37-30-311. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 14, Ch. 565, L. 1983; amd. Sec. 1, Ch. 4, L. 1987.

Part 4
Licensing and Regulation of Barbershops and Schools (Renumbered and Repealed)

37-30-401. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9); amd. Sec. 7, Ch. 565, L. 1983.

37-30-403. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981; amd. Sec. 8, Ch. 565, L. 1983; amd. Sec. 65, Ch. 418, L. 1995.

37-30-404. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981; amd. Sec. 9, Ch. 565, L. 1983.

37-30-405. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 10, Ch. 565, L. 1983.

37-30-406. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 11, Ch. 565, L. 1983.

37-30-407. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 12, Ch. 565, L. 1983.

37-30-408 through 37-30-410 reserved.

37-30-411. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 66, Ch. 418, L. 1995; amd. Sec. 95, Ch. 546, L. 1995; amd. Sec. 136, Ch. 483, L. 2001.

37-30-413. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).

37-30-422. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981; amd. Sec. 67, Ch. 418, L. 1995; amd. Sec. 96, Ch. 546, L. 1995.

37-30-423. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981; amd. Sec. 7, Ch. 390, L. 1983; amd. Sec. 37, Ch. 492, L. 1997.

37-30-424. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981; amd. Sec. 15, Ch. 565, L. 1983; amd. Sec. 36, Ch. 492, L. 1997.

37-30-425. Renumbered 37-30-502. Sec. 3, Ch. 465, L. 1989.

Part 5
Remedies for Violation
(Repealed)

37-30-501. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410; amd. Sec. 17, Ch. 565, L. 1983.

37-30-502. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983; amd. Sec. 91, Ch. 370, L. 1987; amd. Sec. 1, Ch. 465, L. 1989; Sec. 37-30-425, MCA 1987; redes. 37-30-502 by Sec. 3, Ch. 465, L. 1989.

CHAPTER 31
BARBERING, COSMETOLOGY, ELECTROLOGY, ESTHETICS, AND MANICURING

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Part 1
General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of barbers and cosmetologists provided for in 2-15-1747.

(2) "Booth" means any part of a salon or shop that is rented or leased for the performance of barbering, cosmetology, electrology, esthetics, or manicuring services, as specified in 39-51-204.

(3) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) (a) "Electrology" means the study of and the professional practice of permanently removing superfluous hair by destroying the hair roots through passage of an electric current with an electrified needle. Electrology includes electrolysis and thermolysis. Electrology may include the use of waxes for epilation and the use of chemical depilatories.

(b) Electrology does not include pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

(5) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(6) "Esthetics" means skin care of the body, including but not limited to hot compresses or the use of approved electrical appliances or chemical compounds formulated for professional application only and the temporary removal of superfluous hair by means of lotions, creams, or mechanical or electrical apparatus or appliances on another person.

(7) "Manicuring" includes care of the nails, the hands, the lower arms, the feet, and the lower legs and the application and maintenance of artificial nails.

(8) "Place of residence" means a home and the following residences defined under 50-5-101:

(a) an assisted living facility;

(b) an intermediate care facility for the developmentally disabled;

(c) a hospice;

(d) a critical access hospital;

(e) a long-term care facility; or

(f) a residential treatment facility.

(9) "Practice or teaching of barbering" means any of the following practices performed for payment, either directly or indirectly, upon the human body for tonsorial purposes and not performed for the treatment of disease or physical or mental ailments:

(a) shaving or trimming a beard;

(b) cutting, styling, coloring, or waving hair;

(c) straightening hair by the use of chemicals;

(d) giving facial or scalp massages, including treatment with oils, creams, lotions, or other preparations applied by hand or mechanical appliance;

(e) shampooing hair, applying hair tonic, or bleaching or highlighting hair; or

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to the scalp, face, hands, or neck.

(10) (a) "Practice or teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", "esthetics", and "beauty culture" and performed in salons or shops, in booths, or by itinerant cosmetologists when the work is done for the embellishment, cleanliness, and beautification of the hair and body.

(b) The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

(11) (a) "Salon or shop" means the physical location in which a person licensed under this chapter practices barbering, cosmetology, electrology, esthetics, or manicuring.

(b) The term does not include a room provided in a place of residence that is used for the purposes of barbering, cosmetology, electrology, esthetics, or manicuring unless the owner, manager, or operator allows the room to be used for the practice of barbering or the practice of cosmetology to serve nonresidents for compensation, in which case the room must be licensed as a salon or a shop.

(12) "School" means a program and location approved by the board with respect to its course of instruction for training persons in barbering, cosmetology, electrology, esthetics, or manicuring and that meets any other criteria established by the board.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989; amd. Sec. 1, Ch. 473, L. 1993; amd. Sec. 1, Ch. 305, L. 1997; amd. Sec. 17, Ch. 491, L. 1997; amd. Sec. 137, Ch. 483, L. 2001; amd. Sec. 5, Ch. 243, L. 2003; amd. Sec. 1, Ch. 36, L. 2007.

37-31-102. Exemptions. The provisions of this chapter do not prohibit:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) barbering, cosmetology, or esthetics services, including the application of masks, makeup, or other theatrical devices, in the course of or incidental to a theatrical or other visual

arts production, including television or motion pictures, by persons employed or under contract to provide these services.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818; amd. Sec. 6, Ch. 243, L. 2003; amd. Sec. 2, Ch. 244, L. 2003.

37-31-103. Purpose. It is a matter of legislative policy in the state of Montana that the practice of barbering, cosmetology, electrology, esthetics, and manicuring affects the public health, safety, and welfare and is subject to regulation and control in order to protect the public from unauthorized and unqualified practice.

History: En. Sec. 3, Ch. 243, L. 2003.

Part 2
Board of Barbers and Cosmetologists

Part Cross-References

Seal defined, 1-4-201.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1747.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of board business;

(2) the qualification and licensure of applicants to practice barbering, cosmetology, electrology, esthetics, or manicuring or to teach barbering, cosmetology, electrology, esthetics, or manicuring;

(3) the regulation and instruction of apprentices and students;

(4) the conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring for apprentices and students;

(5) the qualification and licensure of applicants for booth rental licenses; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989; amd. Sec. 2, Ch. 305, L. 1997; amd. Sec. 7, Ch. 243, L. 2003; amd. Sec. 82, Ch. 467, L. 2005.

37-31-204. Sanitary rules. The board, subject to the approval of the department of public health and human services, shall prescribe sanitary rules that it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812; amd. Sec. 68, Ch. 418, L. 1995; amd. Sec. 97, Ch. 546, L. 1995.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Contested case procedure, Title 2, ch. 4, part 6.

Licensing to follow contested case procedure, 2-4-631.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice barbering, cosmetology, electrology, esthetics, or manicuring for compensation;

(b) own, manage, operate, or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) manage or operate a salon or shop or a booth; or

(d) teach in a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a salon or shop to employ or use an unlicensed person as a barber, cosmetologist, electrologist, esthetician, or manicurist;

(b) to operate a school of barbering, cosmetology, electrology, esthetics, or manicuring without complying with all of the regulations of 37-31-311;

(c) to practice barbering, cosmetology, electrology, esthetics, or manicuring in any place other than in a licensed salon or shop as provided in this chapter, except when a licensee is requested:

(i) by a customer to go to a place other than a licensed salon or shop and is sent to the customer from a licensed salon or shop; or

(ii) by a customer with a disability or homebound customer to go to the customer's place of residence; or

(d) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989; amd. Sec. 1, Ch. 23, L. 1993; amd. Sec. 2, Ch. 473, L. 1993; amd. Sec. 3, Ch. 305, L. 1997; amd. Sec. 28, Ch. 472, L. 1997; amd. Sec. 8, Ch. 243, L. 2003.

37-31-302. License required to practice, teach, or operate salon or shop, booth, or school. (1) A person may not practice or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license.

(2) A place may not be used or maintained for the teaching of barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed as a school.

(3) A person may not operate or manage a salon or shop without a license or a temporary operating permit as provided in 37-31-312.

(4) A person may not operate or conduct a school of barbering, cosmetology, electrology, esthetics, or manicuring or teach barbering, cosmetology, electrology, esthetics, or manicuring without a license to teach barbering, cosmetology, electrology, esthetics, or manicuring.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, corporation, or other legal entity desiring to operate a salon or shop shall apply to the department for a license. The application must be accompanied by the license fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989; amd. Sec. 3, Ch. 473, L. 1993; amd. Sec. 4, Ch. 305, L. 1997; amd. Sec. 38, Ch. 492, L. 1997; amd. Sec. 9, Ch. 243, L. 2003; amd. Sec. 1, Ch. 194, L. 2005; amd. Sec. 83, Ch. 467, L. 2005.

37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach barbering, cosmetology, electrology, esthetics, or manicuring shall file an application provided by the department and pass the examination prescribed by the board to qualify for licensure.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989; amd. Sec. 10, Ch. 243, L. 2003; amd. Sec. 84, Ch. 467, L. 2005.

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice:

(a) barbering, the person shall obtain a license to practice barbering from the department;

(b) cosmetology, the person shall obtain a license to practice cosmetology from the department;

(c) electrology, the person shall obtain a license to practice electrology from the department;

(d) manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology; or

(e) esthetics, the person shall obtain a license to practice esthetics from the department unless the person is already licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice barbering, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 1,500 hours in a licensed barbering school and must have received a diploma from the barbering school or must have completed the course of study in barbering at a school of cosmetology authorized to offer a course of study in barbering prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file an application and deposit the application fee with the department and pass an examination as to fitness to practice barbering.

(c) The board shall issue a license to practice barbering, without examination, to a person licensed in another state if the board determines that:

(i) the other state's course of study hour requirement is equal to or greater than the hour requirement in this state; and

(ii) the person's license from the other state is current and the person is not subject to pending or final disciplinary action for unprofessional conduct or impairment.

(3) (a) To be eligible to take the examination to practice cosmetology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a licensed cosmetology school and must have received a diploma from the cosmetology school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (3)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice cosmetology.

(4) (a) To be eligible to take the examination to practice electrology, the applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. An applicant may apply to the board for an exception to the requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of education, training, and experience in the field of electrology as prescribed by the board by rule.

(b) A person qualified under subsection (4)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice electrology.

(5) (a) To be eligible to take the examination to practice manicuring, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board in a licensed school of cosmetology or a licensed school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent or a certificate of completion from a vocational-technical program. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (5)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice manicuring.

(6) (a) To be eligible to take the examination to practice esthetics, an applicant must be at least 18 years of age, must be of good moral character, and must possess a high school diploma or its equivalent that is recognized by the superintendent of public instruction. The applicant must have completed a course of study prescribed by the board and consisting of not less than 650 hours of training and instruction in a licensed school of cosmetology or a licensed school of esthetics. A person may apply to the board for an exception to the educational requirement of a high school diploma or its equivalent. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (6)(a) shall file an application and deposit the required application fee with the department and pass an examination as to fitness to practice esthetics.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989; amd. Sec. 4, Ch. 473, L. 1993; amd. Sec. 26, Ch. 308, L. 1995; amd. Sec. 5, Ch. 305, L. 1997; amd. Sec. 11, Ch. 243, L. 2003; amd. Sec. 85, Ch. 467, L. 2005.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach or instruct in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the person shall obtain from the department a license to teach.

(2) To be eligible for a license to teach barbering, cosmetology, electrology, esthetics, or manicuring, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma that is recognized by the superintendent of public instruction;

(b) have a license to practice issued by the department in the particular area of practice in which the person plans to teach;

(c) have been actively engaged in that particular area of practice for 12 continuous months before taking the teacher's examination; and

(d) have received a diploma from a licensed school approved by the board, certifying satisfactory completion of 650 hours of student teacher training.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985; amd. Sec. 5, Ch. 473, L. 1993; amd. Sec. 6, Ch. 305, L. 1997; amd. Sec. 12, Ch. 243, L. 2003; amd. Sec. 86, Ch. 467, L. 2005; amd. Sec. 8, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) near middle after "may teach" substituted reference to instruction in either of five types of schools for "manicuring or esthetics to persons seeking only to be licensed to practice manicuring or esthetics or to teach cosmetology" and at end deleted "cosmetology"; in (2) near beginning after "eligible" substituted reference to license to teach any of five subjects for "to take an examination to obtain a license to teach cosmetology"; in (2)(b) after "practice" deleted "cosmetology" and after "department" substituted reference to particular teaching area for "and have received a diploma from a licensed school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training"; in (2)(c) substituted current text for "have been actively engaged as a cosmetologist for 3 continuous years immediately before taking the teacher's examination";

inserted (2)(d) regarding receipt of diploma; deleted former (3) through (8) relating to qualifications for teaching manicuring, esthetics, barbering, and electrology (see 2011 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2011.

37-31-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

37-31-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

37-31-308. Exemption for persons with disabilities. A person with a physical disability who is trained for barbering, cosmetology, electrology, esthetics, or manicuring by the department of public health and human services is, for a period of 1 year immediately following graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of public health and human services that a department of public health and human services beneficiary has successfully completed the required training in a school of barbering, cosmetology, electrology, esthetics, or manicuring, the department shall issue the person the necessary license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989; amd. Sec. 6, Ch. 473, L. 1993; amd. Sec. 98, Ch. 546, L. 1995; amd. Sec. 7, Ch. 305, L. 1997; amd. Sec. 29, Ch. 472, L. 1997; amd. Sec. 13, Ch. 243, L. 2003; amd. Sec. 87, Ch. 467, L. 2005.

37-31-309. Booth rental license. (1) A person may not receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

(2) A booth rental license that is not renewed within 1 year of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained. The provisions of 37-1-141 do not apply to this subsection.

History: En. Sec. 9, Ch. 88, L. 1989; amd. Sec. 9, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 inserted (2) regarding termination of booth rental license; and made minor changes in style. Amendment effective October 1, 2011.

37-31-310 reserved.

37-31-311. Schools — license — requirements — bond — curriculum. (1) A person, firm, partnership, corporation, or other legal entity may not operate a school for the purpose of teaching barbering, cosmetology, electrology, esthetics, or manicuring for compensation unless licensed by the department. Application for the license must be filed with the department on an approved form.

(2) A school for teaching barbering may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of barbering.

(c) It maintains a school term of not less than 1,500 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of barbering.

(3) A school for teaching cosmetology may not be granted a license unless the school complies with or is able to comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times involved in the immediate supervision of the work of the school or other teachers determined by the board to be necessary for the proper conduct of the school. There may not be more than 25 students for each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and a course of practical training and technical instruction equal to the requirements for board examinations. The school's course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(4) A school for teaching electrology may not be granted a license unless the school maintains a school term and a course of practical training and technical instruction prescribed by the board, and possesses apparatus and equipment necessary for teaching electrology as prescribed by the board.

(5) A school for teaching manicuring may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(6) A school for teaching esthetics may not be granted a license unless the school complies with subsections (3)(a) and (3)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of esthetics.

(b) It maintains a school term and a course consisting of not less than 650 hours of practical training and technical instruction as prescribed by the board.

(c) It does not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of esthetics.

(7) Licenses for schools of barbering, cosmetology, electrology, esthetics, or manicuring may be refused, revoked, or suspended as provided in 37-31-331.

(8) A teacher or student teacher may not be permitted to practice barbering, cosmetology, electrology, esthetics, or manicuring on the public in a school of barbering, cosmetology, electrology, esthetics, or manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(9) The board may make further rules necessary for the proper conduct of schools of barbering, cosmetology, electrology, esthetics, and manicuring.

(10) The board shall require the person, firm, partnership, corporation, or other legal entity operating a school of barbering, cosmetology, electrology, esthetics, or manicuring to furnish a bond or other security in the amount of $5,000 and in a form and manner prescribed by the board.

(11) A professional salon or shop may not be operated in connection with a school of barbering, cosmetology, electrology, esthetics, or manicuring.

(12) The board may, by rule, establish a suitable curriculum for teachers' training in licensed schools of barbering, cosmetology, electrology, esthetics, or manicuring.

History: **En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985; amd. Sec. 7, Ch. 473, L. 1993; amd. Sec. 8, Ch. 305, L. 1997; amd. Sec. 14, Ch. 243, L. 2003; amd. Sec. 88, Ch. 467, L. 2005.**

37-31-312. Inspection — temporary permits. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting salons or shops and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a salon or shop, booth, school of barbering, school of cosmetology, school of electrology, school of esthetics, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee or school to permit the inspection during business hours is cause for revocation of a licensee's or school's license.

(2) When an owner or operator applies for a shop or salon license and pays licensure and inspection fees prescribed by the board, the board:

(a) may authorize the department to grant to a new salon or shop a temporary operating permit; or

(b) shall, in order to avoid a disruption of business, authorize the department to grant a temporary operating permit to an existing shop or salon whose owner or operator is currently in good standing with the board, as defined by the board, and who is relocating to a new location. An owner or operator of an existing shop or salon may not receive a temporary operating permit under this section within 90 days of a license renewal date.

(3) A temporary operating permit granted pursuant to subsection (2) authorizes the salon or shop to operate until an inspection is conducted of the salon or shop and the salon or shop owner or manager has had 30 days to respond in writing to all inspection report violations to the board office. A license will not be granted to a salon or shop if the board does not receive a response within 30 days from the date of the inspection or the response received does not indicate that all of the inspection violations have been corrected, in which case a new license application must be filed. A temporary permit is not renewable.

(4) The department shall require an inspector appointed under subsection (1) to conduct an annual inspection of each salon or shop in the state.

History: **(1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989; amd. Sec. 1, Ch. 458, L. 1991; amd. Sec. 8, Ch. 473, L. 1993; amd. Sec. 9, Ch. 305, L. 1997; amd. Sec. 15, Ch. 243, L. 2003; amd. Sec. 2, Ch. 194, L. 2005; amd. Sec. 89, Ch. 467, L. 2005; amd. Sec. 10, Ch. 100, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 100 in (3) in first sentence after "shop to operate" substituted current text for "for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever comes first" and inserted second sentence regarding granting of license if shop fails to respond or indicate corrections of violations. Amendment effective October 1, 2011.

37-31-313 through 37-31-320 reserved.

37-31-321. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807; amd. Sec. 16, Ch. 243, L. 2003.**

37-31-322. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985; amd. Sec. 9, Ch. 473, L. 1993; amd. Sec. 94, Ch. 429, L. 1995; amd. Sec. 17, Ch. 243, L. 2003; amd. Sec. 38, Ch. 271, L. 2003.**

37-31-323. Fees. (1) Fees for licenses must be paid to the department in amounts prescribed by the board.

(2) The license fees must be paid in advance to the department unless otherwise provided by board rule.

(3) Other or additional license fees may not be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of barbering, cosmetology, electrology, esthetics, or manicuring.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981; amd. Sec. 18, Ch. 243, L. 2003; amd. Sec. 90, Ch. 467, L. 2005.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, corporation, or other legal entity operating a salon or shop or a school of barbering, cosmetology, electrology, esthetics, or manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of public health and human services for the regulation of salons or shops or schools of barbering, cosmetology, electrology, esthetics, or manicuring;

(c) gross malpractice;

(d) continued practice by a person who knowingly has an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) The board may not refuse to authorize the department to issue or renew a license or to revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985; amd. Sec. 10, Ch. 473, L. 1993; amd. Sec. 69, Ch. 418, L. 1995; amd. Sec. 99, Ch. 546, L. 1995; amd. Sec. 10, Ch. 305, L. 1997; amd. Sec. 19, Ch. 243, L. 2003; amd. Sec. 43, Ch. 44, L. 2007.

37-31-332. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 32
ELECTROLOGY
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Board of Cosmetologists
(Repealed)

Part 3 — Licensing
(Repealed)

Part 1
General
(Repealed)

37-32-101. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981; amd. Sec. 138, Ch. 483, L. 2001.

37-32-103. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 106, L. 1981.

Part 2
Board of Cosmetologists
(Repealed)

37-32-201. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1); amd. Sec. 1, Ch. 40, L. 1985.

Part 3
Licensing
(Repealed)

37-32-301. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1); amd. Sec. 2, Ch. 40, L. 1985.

37-32-302. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

37-32-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

37-32-304. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605; amd. Sec. 3, Ch. 40, L. 1985.

37-32-305. Repealed. Sec. 23, Ch. 243, L. 2003.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 95, Ch. 429, L. 1995; amd. Sec. 39, Ch. 492, L. 1997.

37-32-306. Repealed. Sec. 23, Ch. 243, L. 2003.
History: En. Sec. 4, Ch. 40, L. 1985.

37-32-307 through 37-32-309 reserved.

37-32-310. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 5, Ch. 40, L. 1985.

37-32-311. Repealed. Sec. 23, Ch. 243, L. 2003.
History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

CHAPTER 33
MASSAGE THERAPY

Part 1 — General (Repealed)

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37-33-401. Short title.
37-33-402. Purpose.
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Part 1
General
(Repealed)

37-33-101. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

Part 2
Board of Massage Therapists
(Repealed)

37-33-201. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. Repealed. Sec. 7, Ch. 84, L. 1983.
History: En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

Part 3
Licensing
(Repealed)

37-33-301. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. Repealed. Sec. 7, Ch. 84, L. 1983.

History: En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

Part 4
General Provisions

37-33-401. Short title. This chapter may be cited as the "Massage Therapy Licensing Act".

History: En. Sec. 1, Ch. 451, L. 2009.

37-33-402. Purpose. (1) The legislature finds that the practice of massage therapy affects the health, safety, and welfare of the people of this state and declares that the practice of massage therapy contributes to choice in health care.

(2) It is the purpose of this chapter to regulate the massage therapy profession, to create a board of massage therapy that will issue massage therapy licenses in accordance with this chapter and the board's rules, and to define the terminology describing competencies of the massage therapy profession.

History: En. Sec. 2, Ch. 451, L. 2009.

37-33-403. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of massage therapy provided for in 2-15-1782.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" means a person who is licensed by the board to practice massage therapy. The terms are equivalent terms, and any derivation of the phrases or any letters implying the phrases are equivalent terms. Any reference to any one of the terms in this chapter includes the others.

(4) (a) (i) "Massage therapy" when provided by a massage therapist means the application of a system of structured touch, pressure, positioning, or holding to soft tissues of the body, Swedish massage, effleurage, petrissage, tapotement, percussion, friction, vibration, compression, passive and active stretching or movement within the normal anatomical range of motion, the external application of water, heat, cold, lubricants, salts, skin brushing, or other topical preparations not classified as prescription drugs, providing information for self-care stress management, and the determination of whether massage is contraindicated and whether referral to another health care practitioner is recommended.

(ii) The techniques described in subsection (4)(a)(i) must be applied by the massage therapist through the use of hands, forearms, elbows, knees, or feet or through the use of hand-held tools that mimic or support the action of the hands and are primarily intended to enhance or restore health and well-being by promoting pain relief, stress reduction, and relaxation.

(b) The term does not include providing examinations for the purpose of diagnosis, providing treatments that are outside the scope of massage therapy, attempts to adjust, manipulate, or mobilize any articulations of the body or spine by the use of high-velocity, low-amplitude thrusting force, exercise, exercise instruction or prescription, or the use of tape when applied to restrict joint movement, manual or mechanical traction when applied to the spine or extremities for the purposes of joint mobilization or manipulation, injection therapy, laser therapy, microwave diathermy, electrical stimulation, ultrasound, iontophoresis, or phonophoresis.

History: En. Sec. 3, Ch. 451, L. 2009.

37-33-404. Exemptions — rules. (1) The provisions of this chapter do not limit or regulate the scope of practice of any other profession licensed under the laws of this state, including but not limited to medicine, dentistry, osteopathy, podiatry, nursing, physical therapy, chiropractic, acupuncture, veterinary medicine, occupational therapy, naturopathic medicine, cosmetology, manicuring, barbering, esthetics, electrology, professional counseling, social work, psychology, or athletic training.

(2) A continuing education course instructor is not required to be licensed as a massage therapist.

(3) A massage therapy student, when enrolled in a board-approved program and while practicing the skills of massage therapy designated as a school-sanctioned activity and under the supervision of a licensed massage therapist, is not required to be licensed.

(4) The provisions of this chapter do not limit or regulate the practice of Native American traditional healing or faith healing.

(5) (a) The provisions of this chapter do not limit or regulate the practice of any person who uses:

(i) touch, words, and directed movement to deepen awareness of existing patterns of movement in the body, as well as to suggest new possibilities of movement. Exempt practices under this subsection (5)(a)(i) include but are not limited to the Feldenkrais method of somatic education, the Trager approach to movement education, and body-mind centering.

(ii) touch to affect the human energy systems, energy meridians, or energy fields. Exempted practices under this subsection (5)(a)(ii) include but are not limited to polarity bodywork therapy, Asian bodywork therapy, acupressure, jin shin do, qigong, reiki, shiatsu, and tui na.

(iii) touch to effect change on the integration of the structure of the physical body. Exempt practices under this subsection (5)(a)(iii) include but are not limited to the Rolf method of structural integration, Rolfing, and Hellerwork.

(iv) touch to affect the reflex areas located in the hands, feet, and outer ears. Exempt practices under this subsection (5)(a)(iv) include but are not limited to reflexology.

(b) The exemptions in subsection (5)(a) apply only if:

(i) the person is recognized by or meets the established requirements of either a professional organization or credentialing agency that represents or certifies the respective practice based on a minimum level of training, demonstration of competence, and adherence to ethical standards; and

(ii) the person's services are not designated as or implied to be massage therapy.

History: En. Sec. 4, Ch. 451, L. 2009.

37-33-405. Powers and duties of board — rulemaking authority. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(3) adopt rules establishing reasonable requirements for continuing education, which must require 12 hours of continuing education to be completed in each 2-year period;

(4) meet as often as necessary for the conduct of business but at least twice a year; and

(5) take disciplinary action necessary to protect the public as provided for in Title 37, chapter 1.

History: En. Sec. 5, Ch. 451, L. 2009.

Part 5
Licensing

37-33-501. License required — enjoining unlawful practice. (1) As of July 1, 2010, a person who is not eligible for a license under 37-33-503 may not practice or purport to practice massage therapy without first obtaining a license under the provisions of 37-33-502.

(2) A person who is not licensed as a massage therapist under 37-33-503 or this section, whose license has been suspended or revoked, or whose license has lapsed and has not been revived may not use the words or letters "massage therapist", "licensed massage therapist", "L.M.T.", "masseur", or "masseuse" or any other letters, words, or insignia indicating or implying that the person is a licensed massage therapist or in any way, orally, in writing, or in print or by sign, directly or by implication, purport to be a massage therapist. A person who knowingly violates the provisions of this subsection is guilty of a misdemeanor as provided in 37-33-504.

History: En. Sec. 6, Ch. 451, L. 2009.

37-33-502. Qualifications for licensure. (1) To be eligible for licensure as a massage therapist as provided in 37-33-501, an applicant:

(a) shall submit an application on a form provided by the department;

(b) shall include with the application the application fee set by the board;

(c) must posses a high school diploma or its equivalent;

(d) must be at least 18 years of age; and

(e) must be of good moral character.

(2) The applicant, in addition to the requirements established in subsection (1), is required to:

(a) successfully complete a massage therapy program of a minimum of 500 hours of study that meets or exceeds the curriculum guidelines established by any program or organization accredited by the national commission for certifying agencies or its equivalent or successor and receive a passing score on an examination prescribed by the board; or

(b) possess an equivalent current license, certification, or registration in good standing from another state.

History: En. Sec. 7, Ch. 451, L. 2009.

37-33-503. Initial licensure — grandfather clause. (1) As of July 1, 2010, the board shall issue a massage therapy license to an applicant who applies or has applied for a license by paying the application fee and by providing a signed affidavit to the board that the applicant has engaged in the practice of massage therapy for at least 100 hours in Montana prior to applying for a massage therapy license under this section and that the applicant meets the requirements of 37-33-502(1)(a), (1)(b), (1)(d), and (1)(e). The board shall by rule establish the application fee not later than January 1, 2010.

(2) (a) A license issued under this section is valid for the same initial period as a license issued under 37-33-502 and is subject to the same renewal requirements and renewal fees as a license issued under 37-33-502.

(b) A person may not apply for licensure under this section after July 1, 2012.

History: En. Sec. 8, Ch. 451, L. 2009.

37-33-504. Penalty. Any person who knowingly violates any provisions of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment in the county jail for a term of not more than 6 months, or both.

History: En. Sec. 9, Ch. 451, L. 2009.

CHAPTER 34
CLINICAL LABORATORY SCIENCE PRACTITIONERS

Part 1 — General

37-34-101. Short title.
37-34-102. Declaration of policy and purpose.
37-34-103. Definitions.

Part 2 — Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of board — rulemaking authority.

Part 3 — Licensing

37-34-301. License required.
37-34-302. Exemptions.
37-34-303. Standards for licensure.
37-34-304. Repealed.
37-34-305. Licensure application procedures.
37-34-306. Repealed.
37-34-307. Violation — penalties — injunction — manner of charging violation.
37-34-308. Repealed.

Part 1
General

37-34-101. Short title. This chapter may be cited as the “Clinical Laboratory Science Practice Act”.

History: En. Sec. 1, Ch. 345, L. 1993.

37-34-102. Declaration of policy and purpose. The legislature finds and declares that because the practice of clinical laboratory science affects the public health, safety, and welfare of Montana citizens, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of clinical laboratory science. The legislature further declares that because clinical laboratory science practitioners provide essential services to other health care providers by furnishing vital information that may be used in the assessment of human health and in the diagnosis, prevention, and treatment of disease or impairment, clinical laboratory tests must be performed by individuals who meet specific standards of competency.

History: En. Sec. 2, Ch. 345, L. 1993.

37-34-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Board” means the board of clinical laboratory science practitioners established in 2-15-1753.

(2) “Clinical laboratory” or “laboratory” means any facility or office in which clinical laboratory tests are performed.

(3) (a) “Clinical laboratory science practitioner” means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of labor and industry provided for in 2-15-1701.

(9) "License" means the clinical laboratory science license issued under this chapter.

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

History: En. Sec. 3, Ch. 345, L. 1993; amd. Sec. 139, Ch. 483, L. 2001.

Part 2
Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in Title 37, chapter 1, and this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of acceptable certifications for each category of license;

(b) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303; and

(c) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.

History: En. Sec. 7, Ch. 345, L. 1993; amd. Sec. 96, Ch. 429, L. 1995; amd. Sec. 40, Ch. 271, L. 2003; amd. Sec. 91, Ch. 467, L. 2005.

Cross-References

Board — composition — allocation — quasi-judicial — compensation, 2-15-1753.

Part 3
Licensing

37-34-301. License required. A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to this chapter.

History: En. Sec. 4, Ch. 345, L. 1993.

37-34-302. Exemptions. (1) This chapter does not limit or regulate the practice of licensed physicians, including but not limited to pathologists.

(2) This chapter does not apply to:

(a) any other profession licensed under Title 37 to the extent that the applicable scope of that practice, as defined by statute, rules of the board or agency governing the other profession, or both the statute and rules, authorizes the performance of a clinical laboratory test;

(b) clinical laboratory science practitioners employed by the United States or by any bureau, division, or agency of the United States, while in the discharge of the employee's official duties;

(c) clinical laboratory science practitioners engaged in teaching or research, provided that the results of any examination performed are not used in health maintenance, diagnosis, or treatment of disease;

(d) students or trainees enrolled in a clinical laboratory science education or training program, provided that:

(i) these activities constitute a planned course in the program;

(ii) the persons are designated by a title, such as intern, trainee, or student; and

(iii) the persons work directly under an individual licensed by this state to practice clinical laboratory science;

(e) any person performing only waived tests as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or

(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2).

History: En. Sec. 5, Ch. 345, L. 1993.

37-34-303. Standards for licensure. (1) The board shall issue a clinical laboratory scientist license to an individual who meets the qualifications as promulgated by rules of the board. At a minimum, a licensee must be a person who:

(a) has graduated with a baccalaureate degree, including a minimum number of hours in areas or disciplines established by rule by the board; and

(b) has passed a certifying examination approved by the board.

(2) The board shall issue a clinical laboratory specialist license to an individual who has graduated with a baccalaureate degree as described in subsection (1) and has passed a certifying examination covering those fields in which the applicant is eligible and approved by the board. The license must be issued as a clinical laboratory specialist license and must state the designation of the area of specialty.

(3) The board shall issue a clinical laboratory technician license to an individual who meets the qualifications promulgated by the board, including the following minimum qualifications:

(a) completion of an associate degree or 60 semester hours in a science-related discipline;

(b) completion of other equivalent formal education as approved by the board; and

(c) passing a certifying examination approved by the board.

History: En. Sec. 8, Ch. 345, L. 1993.

37-34-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 345, L. 1993.

37-34-305. Licensure application procedures. (1) An applicant shall submit an application for a license to the board and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the department shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to 37-34-201 and 37-34-303.

History: En. Sec. 10, Ch. 345, L. 1993; amd. Sec. 97, Ch. 429, L. 1995; amd. Sec. 92, Ch. 467, L. 2005.

37-34-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 11, Ch. 345, L. 1993.

37-34-307. Violation — penalties — injunction — manner of charging violation. (1) A person who violates a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Except as provided in 37-34-302, the board may maintain an action to enjoin a person from engaging in the practice of clinical laboratory science until a license to practice is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing clinical laboratory science without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender.

(3) When charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing clinical laboratory science without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of clinical laboratory science while not having a license to do so, without specifying particular facts concerning the violation.

History: En. Sec. 12, Ch. 345, L. 1993.

37-34-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 13, Ch. 345, L. 1993.

CHAPTER 35
ADDICTION COUNSELORS

Part 1 — General

37-35-101. Purpose.
37-35-102. Definitions.
37-35-103. Department powers and duties.

Part 2 — Certification

37-35-201. License required — exceptions.
37-35-202. Licensure requirements — examination — fees — temporary practice permit.
37-35-203. Repealed.

Part 3 — Regulation

37-35-301. Unprofessional conduct complaint — sanctions.
37-35-302. Penalty.
37-35-303. Deposit of fees.
37-35-304. Transition — transfer of license.

Chapter Cross-References

Mandatory dangerous drug information course, 45-9-208, 45-10-108.
Alcoholism and drug dependence, Title 53, ch. 24.
Penalty for driving under influence of alcohol or drugs, 61-8-714.

Part 1
General

37-35-101. Purpose. The legislature finds and declares that because the profession of addiction counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring the ethical, qualified, and professional practice of addiction counseling. This chapter and the rules promulgated under 37-35-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of addiction counseling as licensed addiction counselors.

History: En. Sec. 1, Ch. 507, L. 1997; amd. Sec. 5, Ch. 23, L. 2001.

37-35-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by a regional or national accrediting association for institutions of higher learning.

(2) "Addiction" means the condition or state in which an individual is physiologically or psychologically dependent upon alcohol or other drugs. The term includes chemical dependency as defined in 53-24-103.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to provide the therapeutic process of addiction counseling and who is licensed under the provisions of this chapter.

History: En. Sec. 2, Ch. 507, L. 1997; amd. Sec. 6, Ch. 23, L. 2001; amd. Sec. 140, Ch. 483, L. 2001; amd. Sec. 1, Ch. 72, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 72 in definition of accredited college or university near middle inserted "or national". Amendment effective October 1, 2011.

37-35-103. Department powers and duties. (1) The department shall:

(a) license and renew the licenses of qualified applicants;

(b) adopt rules:

(i) for eligibility requirements and competency standards;

(ii) defining any unprofessional conduct that is not included in 37-1-410; and

(iii) setting criteria for training programs, internships, and continuing education requirements to ensure the quality of addiction counseling.

(2) The department may:

(a) adopt rules necessary to implement the provisions of this chapter;

(b) adopt rules specifying the scope of addiction counseling that are consistent with the education required by 37-35-202; and

(c) establish licensure requirements and procedures that the department considers appropriate.

History: En. Sec. 3, Ch. 507, L. 1997; amd. Sec. 7, Ch. 23, L. 2001; amd. Sec. 93, Ch. 467, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2
Certification

37-35-201. License required — exceptions. (1) Except as otherwise provided in this chapter, a person may not practice addiction counseling or represent to the public that the person is a licensed addiction counselor unless the person is licensed under the provisions of this chapter.

(2) This chapter does not prohibit an activity or service:

(a) performed by a qualified member of a profession, such as a physician, lawyer, licensed professional counselor, licensed social worker, licensed psychiatrist, licensed psychologist, nurse, probation officer, court employee, pastoral counselor, or school counselor, consistent with the person's licensure or certification and the code of ethics of the person's profession, as long as the person does not represent by title that the person is a licensed addiction counselor. If a person is a qualified member of a profession that is not licensed or certified or for which there is no applicable code of ethics, this section does not prohibit an activity or service of the profession as long as the person does not represent by title that the person is a licensed addiction counselor.

(b) of, or use of an official title by, a person employed or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution if that activity or service or use of that title is a part of the duties of the office or position;

(c) of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) of a student in addiction counseling who is pursuing a course of study at an accredited college or university or who is working in a generally recognized training center if the activity or service constitutes part of the course of study; or

(e) of a person who is not a resident of this state if the activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year and if the person is authorized under the laws of the state or country of residence to perform the activity or service. However, the person shall report to the department the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(3) This chapter is not intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

History: En. Sec. 4, Ch. 507, L. 1997; amd. Sec. 8, Ch. 23, L. 2001; amd. Sec. 36, Ch. 109, L. 2009.

37-35-202. Licensure requirements — examination — fees — temporary practice permit. (1) To be eligible for licensure as a licensed addiction counselor, the applicant shall submit an application fee in an amount established by the department by rule and a written application on a form provided by the department that demonstrates that the applicant has completed the eligibility requirements and competency standards as defined by department rule.

(2) A person may apply for licensure as a licensed addiction counselor if the person has:

(a) received a baccalaureate or advanced degree in alcohol and drug studies, psychology, sociology, social work, or counseling, or a comparable degree from an accredited college or university; or

(b) received an associate of arts degree in alcohol and drug studies, addiction, or substance abuse from an accredited institution.

(3) Prior to becoming eligible to begin the examination process, each person shall complete supervised work experience in an addiction treatment program as defined by the department, in a program approved by the department, or in a similar program recognized under the laws of another state.

(4) Each applicant shall successfully complete a competency examination, in writing only, as defined by rules adopted by the department.

(5) (a) Except as provided in subsections (5)(d) and (6), an applicant who has completed all licensure requirements except the required supervised work experience may apply for a temporary practice permit that authorizes the applicant to complete the required supervised work experience.

(b) Temporary practice permits must be issued if it is determined that:

(i) a complete application approved by the department has been submitted;

(ii) initial screening by program staff shows no current disciplinary action against the applicant in this or any other state;

(iii) the applicant for a temporary practice permit may only function under the supervision of a supervisor who is trained in addiction counseling or a related field as defined by rule and who has an active license in good standing in Montana or any other state; and

(iv) the applicant has completed all educational requirements as prescribed in subsection (2)(a) or (2)(b).

(c) A person may practice licensed addiction counseling under a temporary practice permit until the person either fails the first license examination for which the person is eligible following issuance of the temporary practice permit or passes the examination and is granted a license.

(d) A student is not required to obtain a temporary practice permit.

(6) The provisions of subsection (5) do not apply until the department has adopted rules implementing this section. The rules must provide for a waiver of the provisions of subsection (5) for a person who is engaged in a supervised work experience prior to the adoption of the rules.

(7) A person holding a license to practice as a licensed addiction counselor in this state may use the title "licensed addiction counselor".

(8) For the purposes of this section, "comparable degree" means a degree with accredited college course work, of which 6 credit hours must be in human behavior, sociology, psychology, or a similar emphasis, 3 credit hours must be in psychopathology or course work exploring patterns and courses of abnormal or deviant behavior, and 9 credit hours must be in counseling. For the 9

credit hours in counseling, 6 credit hours must be in group counseling and 3 credit hours must be in the theory of counseling. The credit hours specified in this subsection may be obtained in an associate or master's degree program if the applicant does not have a qualifying baccalaureate degree.

History: En. Sec. 5, Ch. 507, L. 1997; amd. Secs. 9, 10, Ch. 23, L. 2001; amd. Sec. 41, Ch. 126, L. 2005; amd. Sec. 37, Ch. 109, L. 2009.

37-35-203. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 507, L. 1997; amd. Sec. 11, Ch. 23, L. 2001; amd. Sec. 41, Ch. 271, L. 2003.

Part 3
Regulation

37-35-301. Unprofessional conduct complaint — sanctions. (1) A formal complaint alleging unprofessional conduct by a licensed addiction counselor may be directed to the department. The charges must be made by an affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The complaint may allege any unprofessional conduct contained in 37-1-316 or as further defined by department rule that constitutes a threat to the public health, safety, or welfare and that is inappropriate to the practice of a licensed addiction counselor.

(3) The director of the department shall appoint a review panel to investigate a complaint of unprofessional conduct directed to the department. The panel must consist of:

(a) two licensed addiction counselors;

(b) one employee of the department; and

(c) two members of the public.

(4) The panel shall recommend to the department either that the person be cleared of any charges or that a sanction or combination of sanctions contained in 37-1-312 be imposed.

(5) For the purposes of this section, the department is vested with a board's authority for the purposes of the procedures in 37-1-307 through 37-1-318 regarding unprofessional conduct, and 37-1-301 through 37-1-318 apply to any proceeding under this section.

History: En. Sec. 7, Ch. 507, L. 1997; amd. Sec. 12, Ch. 23, L. 2001.

37-35-302. Penalty. A person convicted of violating any provision of this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500, be imprisoned in a county jail for a term not to exceed 6 months, or both.

History: En. Sec. 8, Ch. 507, L. 1997.

37-35-303. Deposit of fees. All fees and money received by the department must be deposited in the state treasury to the credit of a state special revenue fund for use by the department in its performance of its duties under this chapter.

History: En. Sec. 9, Ch. 507, L. 1997.

37-35-304. Transition — transfer of license. The department shall grant a license to practice as a licensed addiction counselor without the need for further application or other requirements to those persons holding a current, unrestricted certificate as a certified chemical dependency counselor as of October 1, 2001, that was issued by the state.

History: En. Sec. 10, Ch. 507, L. 1997; amd. Sec. 13, Ch. 23, L. 2001.

CHAPTER 36
ATHLETIC TRAINERS

Part 1 — General

37-36-101. Definitions.
37-36-102. Board duties — rulemaking.

Part 2 — Regulations—Penalties

37-36-201. Qualifications — temporary license — exemption from examination.
37-36-202. License — revocation.
37-36-203. Representation to public — practice — exemptions.
37-36-204. Application and administration of topical medications.
37-36-205. Violation — penalties.

Part 1
General

37-36-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Athlete" means a person who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) "Athletic injury" means a physical injury received by an athlete.

(3) "Athletic trainer" means an individual who is licensed to practice athletic training.

(4) "Athletic training" means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(5) "Board" means the board of athletic trainers provided for in 2-15-1771.

(6) "Department" means the department of labor and industry provided for in 2-15-1701.

(7) "Licensee" means an individual licensed under this chapter.

History: En. Sec. 2, Ch. 388, L. 2007.

37-36-102. Board duties — rulemaking. (1) The board shall meet at least twice a year for the purposes provided in Title 37, chapter 1, and this chapter.

(2) The board shall adopt rules necessary to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 388, L. 2007.

Part 2
Regulations — Penalties

37-36-201. Qualifications — temporary license — exemption from examination. (1) Applicants for licensure as an athletic trainer shall:

(a) satisfactorily complete an application and an examination prescribed by the department in accordance with rules adopted by the board;

(b) pay application, examination, and licensure fees established by the board;

(c) provide documentation that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the national athletic trainers' association board of certification;

(d) provide the board with letters of recommendation from at least two clinical supervisors familiar with the applicant's clinical training and other documentation by which the board may determine that an applicant has not had a criminal conviction or disciplinary action taken against the applicant by a board or a licensing agency in another state or territory of the United States that may have a direct bearing on the applicant's ability to practice athletic training competently.

(2) (a) The board may issue a temporary license to an applicant who:

(i) meets the qualifications in subsections (1)(b) through (1)(d) but has not yet met the examination requirement in subsection (1)(a); or

(ii) has a valid license from another state or certification as provided in subsection (3)(a) or (3)(b).

(b) A temporary license issued under this section is valid after the date of issuance for 90 days or until the board acts on the person's license application, whichever is earlier.

(3) An applicant may be exempted from the examination requirement in subsection (1)(a) if the applicant:

(a) has a current, valid license to practice athletic training in another state and that state's standards, as determined by the board, are at least equal to the standards for licensure in this state; or

(b) is certified as an athletic trainer by an organization recognized by the national commission for certifying agencies.

History: En. Sec. 4, Ch. 388, L. 2007.

37-36-202. License — revocation. (1) Except as provided in subsection (2), a license issued under this chapter is valid for 1 year.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in 37-36-201;

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board.

History: En. Sec. 5, Ch. 388, L. 2007; amd. Sec. 38, Ch. 109, L. 2009.

37-36-203. Representation to public — practice — exemptions. (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(b) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection (1)(b). Except for an individual listed in subsection (2)(a), an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 11, 12, 20, 24, or 26, from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, other school employee, or supervised volunteer from providing first aid, preventative care, or continuous followup care of athletes and athletic injuries in a school setting.

History: En. Sec. 6, Ch. 388, L. 2007.

37-36-204. Application and administration of topical medications. (1) A licensed athletic trainer may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process by which topical medications are applied through the use of ultrasound.

(2) A licensed athletic trainer may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a licensed athletic trainer must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a licensed athletic trainer who applies or administers topical medications as authorized in this section.

History: En. Sec. 7, Ch. 388, L. 2007.

37-36-205. Violation — penalties. A person who knowingly violates any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $500, by imprisonment in the county jail for a term of not less than 30 days or more than 6 months, or by both fine and imprisonment.

History: En. Sec. 8, Ch. 388, L. 2007.

CHAPTER 37
MARRIAGE AND FAMILY THERAPISTS

Part 1 — General Provisions

37-37-101. Purpose.
37-37-102. Definitions.

Part 2 — Licensing

37-37-201. License requirements — exemptions — temporary permit.
37-37-202. Representation to public as licensed marriage and family therapist.

Part 3 — Regulation—Penalties

37-37-301. Violations — penalties.

Part 1
General Provisions

37-37-101. Purpose. The legislature finds and declares that because the profession of marriage and family therapy affects the public safety and welfare of the lives of people in this state, the purpose of this chapter is to provide for the common good by ensuring the ethical, qualified, and professional practice of marriage and family therapy. This chapter and the rules adopted by the board under 37-22-201 set standards of qualification, education, training, and experience and are intended to establish professional ethics for those who seek to practice marriage and family therapy as licensed marriage and family therapists.

History: En. Sec. 1, Ch. 403, L. 2009.

37-37-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established in 2-15-1744.

(2) "Department" means the department of labor and industry.

(3) "Licensee" means a person licensed under this chapter.

(4) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders within the context of interpersonal relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family system theories and techniques, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples, and families.

(5) "Practice of marriage and family therapy" means the provision of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, for a fee, monetary or otherwise, either directly or through public or private organizations.

(6) "Qualified supervisor" means a supervisor determined by the board to meet standards established by the board for supervision of clinical services.

(7) "Recognized educational institution" means:

(a) an educational institution that grants a bachelor's, master's, or doctoral degree and that is recognized by the board and by a regional accrediting body; or

(b) a postgraduate training institute accredited by the commission on accreditation for marriage and family therapy education.

History: En. Sec. 2, Ch. 403, L. 2009.

Part 2
Licensing

37-37-201. License requirements — exemptions — temporary permit. (1) An applicant for a license shall pay an application fee set by the board by rule. The board may provide a separate, combined fee for persons licensed by the board holding dual licenses. An applicant for a license under this section shall also complete an application on a form provided by the department and provide documentation to the board that the applicant:

(a) (i) has a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution or a degree from a program accredited by the commission on accreditation for marriage and family therapy education; or

(ii) has a graduate degree in an allied field from a recognized educational institution and graduate level work that the board determines to be the equivalent of a master's degree in marriage and family therapy or marriage and family counseling;

(b) has successfully passed an examination prescribed by the board;

(c) has worked under the direct supervision of a qualified supervisor for at least 3,000 hours, including 1,000 hours of face-to-face client contact in the practice of marriage and family therapy, of which up to 500 hours may be accumulated while achieving the educational credentials listed in subsection (1)(a); and

(d) is of good moral character. Being of good moral character includes in its meaning that the applicant has not been convicted by a court of competent jurisdiction of a crime described by board rule as being of a nature that renders the applicant unfit to practice marriage and family therapy.

(2) An applicant is exempt from the examination requirement in subsection (1)(b) if the board is satisfied that:

(a) the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and has passed an examination similar to that required by the board;

(b) for applications received before July 1, 2011, the applicant is a clinical member of the American association for marriage and family therapy and is a current resident of this state; or

(c) the applicant is licensed as a clinical social worker under Title 37, chapter 22, or as a clinical professional counselor under Title 37, chapter 23, and has practiced marriage and family therapy within the state for a period prescribed by the board.

(3) A person is exempt from licensure as a marriage and family therapist if the person practices marriage and family therapy:

(a) under qualified supervision in a training institution or facility or other supervisory arrangements approved by the board and uses the title of intern;

(b) as part of the person's duties as a member of the clergy or priesthood; or

(c) under a temporary permit that the board may issue under rules adopted to allow a 1-year temporary permit to an applicant for licensure pending examination for a license or processing of the application for a license. An applicant with a temporary permit under this subsection shall use the title of "licensed marriage and family therapy candidate".

History: En. Sec. 3, Ch. 403, L. 2009.

37-37-202. Representation to public as licensed marriage and family therapist. (1) Upon issuance of a license in accordance with this chapter, a licensee may:

(a) advertise services as a marriage and family therapist;

(b) use the title of "licensed marriage therapist", "licensed marital therapist", or "licensed marriage and family therapist"; and

(c) practice marriage and family therapy.

(2) Subsection (1) does not prohibit:

(a) individuals licensed as professional counselors, social workers, psychiatric nurses, psychologists, or physicians or members of the clergy or other qualified members of professional groups identified by board rule from advertising or performing marriage and family therapy services in a manner consistent with the accepted standards of their respective professions. Only licensees under this chapter may use any title described in subsection (1)(b).

(b) persons employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution from providing counseling if the practice of marriage and family therapy is a part of the duties of the office or position.

History: **En. Sec. 4, Ch. 403, L. 2009.**

Part 3
Regulation — Penalties

37-37-301. Violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) indicate that the person is a licensed marriage and family therapist without being licensed under this chapter;

(b) obtain or attempt to obtain a license by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or be fined not more than $500, or both. A person convicted of a second or a subsequent offense under this section shall be punished by both a fine and imprisonment.

History: **En. Sec. 5, Ch. 403, L. 2009.**

CHAPTERS 38 AND 39
RESERVED

CHAPTER 40
SANITARIANS

Part 1 — General

37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Presiding officer — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Repealed.
37-40-304. Repealed.
37-40-305. Repealed.
37-40-306. Repealed.
37-40-307. Repealed.
37-40-308 through 37-40-310 reserved.
37-40-311. Repealed.
37-40-312. Penalty.

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.

Cooperation of sanitarians with reviewing authority, 76-4-106.

Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Part 1
General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1751.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of the person's special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, or enforcement duties, is qualified to practice the profession of sanitarian.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 545, L. 1991; amd. Sec. 141, Ch. 483, L. 2001.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as the activities are performed as part of an academic position in a college or university;

(2) any person who is a registered professional engineer or engineer intern;

(3) any public health officer employed pursuant to 50-2-116;

(4) any person employed by a federal governmental agency, but only at times that the person is carrying out the functions of the employment;

(5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6); amd. Sec. 2, Ch. 545, L. 1991; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1397, Ch. 56, L. 2009.

Part 2
Board of Sanitarians

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1751.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-40-201. Presiding officer — meetings. The board shall appoint one of its members presiding officer. The board shall meet at least once a year and at other times as agreed upon.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2); amd. Sec. 3, Ch. 545, L. 1991; amd. Sec. 20, Ch. 230, L. 1999.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

37-40-203. Rulemaking power. (1) The board may adopt rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions must be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians; and

(d) defining qualifications for sanitarian-in-training status for issuance of the initial permit.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3); amd. Sec. 4, Ch. 545, L. 1991; amd. Sec. 98, Ch. 429, L. 1995; amd. Sec. 40, Ch. 492, L. 1997.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold out to the public in any manner that the person is a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411; amd. Sec. 5, Ch. 545, L. 1991; amd. Sec. 1398, Ch. 56, L. 2009.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form furnished by the department.

(2) An applicant must have a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration.

(4) A holder of a current certificate is entitled to append to the holder's name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981; amd. Sec. 6, Ch. 545, L. 1991; amd. Sec. 1, Ch. 16, L. 1993; amd. Sec. 1, Ch. 196, L. 2003; amd. Sec. 94, Ch. 467, L. 2005.

37-40-303. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981; amd. Sec. 7, Ch. 545, L. 1991.

37-40-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981; amd. Sec. 8, Ch. 545, L. 1991; amd. Sec. 99, Ch. 429, L. 1995; amd. Sec. 41, Ch. 492, L. 1997; amd. Sec. 42, Ch. 271, L. 2003.

37-40-305. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 545, L. 1991.

37-40-306. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Repealed. Sec. 12, Ch. 545, L. 1991.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.

37-40-308 through 37-40-310 reserved.

37-40-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981; amd. Sec. 10, Ch. 545, L. 1991.

37-40-312. Penalty. (1) A person who offers the person's services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that the person is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or by imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420; amd. Sec. 11, Ch. 545, L. 1991; amd. Sec. 1399, Ch. 56, L. 2009.

CHAPTER 41
CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Licensing
(Repealed)

Part 1
General
(Repealed)

37-41-101. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 2, Ch. 556, L. 1983.

37-41-102. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406; amd. Sec. 3, Ch. 556, L. 1983.

37-41-104. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 1, Ch. 556, L. 1983; amd. Sec. 70, Ch. 418, L. 1995; amd. Secs. 100, 568, Ch. 546, L. 1995.

37-41-105. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 8, Ch. 556, L. 1983.

Part 2
Licensing
(Repealed)

37-41-201. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402; amd. Sec. 4, Ch. 556, L. 1983.

37-41-202. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403; amd. Sec. 5, Ch. 556, L. 1983; amd. Sec. 1, Ch. 392, L. 1991.

37-41-203. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.

37-41-205. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 2, Ch. 392, L. 1991.

37-41-206 through 37-41-210 reserved.

37-41-211. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 6, Ch. 556, L. 1983.

37-41-212. Repealed. Sec. 12, Ch. 378, L. 1999.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408; amd. Sec. 7, Ch. 556, L. 1983; amd. Sec. 27, Ch. 557, L. 1987.

CHAPTER 42
WATER TREATMENT PLANT OPERATORS

Part 1 — General

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Repealed.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses.
37-42-202. Rulemaking power — examinations — continuing education requirements.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — exception.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment — notification to department.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — disciplinary action by department.
37-42-322. Violation.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.
Water quality, Title 75, ch. 5.
Public water supplies, distribution, and treatment, Title 75, ch. 6.
Aquatic ecosystem protections, Title 75, ch. 7.
Sanitation in subdivisions, Title 76, ch. 4, part 1.

Part 1
General

37-42-101. Purpose. It is declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's state waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared that the public policy of this state is to protect the public health and safety by certifying persons working in these occupations.

History: En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901; amd. Sec. 1, Ch. 488, L. 1995.

37-42-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(3) "Community water system" means a public water supply system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents.

(4) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Industrial waste" means any waste substance from the processes of business or industry or from the development of a natural resource, together with any sewage that may be present.

(7) "Industrial waste discharge system" means a system that discharges industrial waste into state waters.

(8) "Nontransient noncommunity water system" means a public water system, as defined in 75-6-202, that is not a community system and that regularly serves at least 25 of the same persons for at least 6 months a year.

(9) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(10) "State waters" means the term as defined in 75-6-102.

(11) "Wastewater treatment plant" means a facility that:

(a) is designed to remove solids, bacteria, or other harmful constituents of sewage, industrial waste, or other wastes; and

(b) is part of either an industrial waste discharge system or a public sewage system as defined in 75-6-102.

(12) "Water distribution system" means that portion of the water supply system that conveys water from the water treatment plant or other supply source to the premises of the consumer and that is part of a community water system or a nontransient noncommunity water system.

(13) "Water supply system" means a system of pipes, structures, and facilities through which water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and that is part of a community water system or a nontransient noncommunity water system.

(14) "Water treatment plant" means that portion of the water supply system that alters either the physical, chemical, or bacteriological quality of the water and renders it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 4, Ch. 243, L. 1983; amd. Sec. 71, Ch. 418, L. 1995; amd. Sec. 2, Ch. 488, L. 1995; amd. Sec. 1, Ch. 538, L. 1997; amd. Sec. 1, Ch. 79, L. 2001; amd. Sec. 1, Ch. 213, L. 2001; amd. Sec. 1, Ch. 423, L. 2007.

37-42-103. Repealed. Sec. 2, Ch. 213, L. 2001.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 1, Ch. 195, L. 1999.

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.

Part 2
Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a presiding officer must be elected at the next council meeting.

(2) Meetings may be called by the presiding officer or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5).

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3); amd. Sec. 5, Ch. 243, L. 1983; amd. Sec. 1400, Ch. 56, L. 2009.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Disrupting meeting as disorderly conduct, 45-8-101.

37-42-202. Rulemaking power — examinations — continuing education requirements. (1) The department shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910; amd. Sec. 6, Ch. 243, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-42-203. Duty to advise and assist department. The council shall advise and assist the department in the administration of the certification program. The council shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1); amd. Sec. 7, Ch. 243, L. 1983.

Cross-References

Public water supplies — actions to enforce compliance, 75-6-111.

Part 3
Licensing

Part Cross-References

Contested case as including licensing, 2-4-102.
Contested case procedure, Title 2, ch. 4, part 6.
Licensing to follow contested case procedure, 2-4-631.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: (1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part); amd. Sec. 8, Ch. 243, L. 1983.

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — exception. (1) Except as provided in subsection (3), it is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate the plant or system unless the competency of the operator is certified to by the department under this chapter.

(2) Except as provided in subsection (3), it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

(4) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911; amd. Sec. 9, Ch. 243, L. 1983; amd. Sec. 2, Ch. 195, L. 1999.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost, except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may not act on an application until the fee has been paid.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 10, Ch. 243, L. 1983; amd. Sec. 3, Ch. 195, L. 1999; amd. Sec. 95, Ch. 467, L. 2005.

37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that the applicant has successfully passed an examination at least equivalent to that required under 37-42-202(2).

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part); amd. Sec. 11, Ch. 243, L. 1983; amd. Sec. 92, Ch. 370, L. 1987; amd. Sec. 1401, Ch. 56, L. 2009.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment — notification to department. (1) Operators who terminate employment may retain their certificate for 2 years, provided that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification, provided appropriate proof of competency is presented to the department. Successful completion of an examination may be required at the discretion of the department.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3); amd. Sec. 12, Ch. 243, L. 1983.

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter must be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department, except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.

(2) Subject to subsection (6), if a certificate holder does not apply for a renewal of the certificate before July 1 and remit to the department the necessary renewal fee, the department shall suspend the certificate. Subject to subsection (6), the department shall revoke any certificate that remains suspended for a period of more than 30 days. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of the department's intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension must be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through the person's own fault desires to continue as a water or wastewater plant operator, the person shall apply to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

(6) This section may not be interpreted to conflict with the provisions of 37-1-138.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909; amd. Sec. 13, Ch. 243, L. 1983; amd. Sec. 4, Ch. 195, L. 1999; amd. Sec. 43, Ch. 271, L. 2003; amd. Sec. 96, Ch. 467, L. 2005.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the department state special revenue fund and shall be used to pay the expenses of the council and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 14, Ch. 243, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may issue an order revoking the certificate of an operator when the department finds that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or

(c) the operator is incompetent or unable to properly perform the operator's duties.

(2) The department may issue an order taking any disciplinary action listed in 37-1-136.

(3) A person aggrieved by an order of the department under this section may request a hearing before the board by submitting a written request stating the reason for the request within 30 days after receipt of the department's decision.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing held under this section.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2); amd. Sec. 15, Ch. 243, L. 1983; amd. Sec. 2, Ch. 79, L. 2001.

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.

Cross-References

Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.
Penalty when none specified, 46-18-212.

CHAPTER 43
WATER WELL CONTRACTORS

Part 1 — General

37-43-101. Purpose.
37-43-102. Definitions.
37-43-103. Repealed.
37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells.

Part 2 — Board of Water Well Contractors

37-43-201. Organization — seal — compensation of members.
37-43-202. Powers and duties.
37-43-203. Renumbered 37-43-314.
37-43-204. Earmarked money for board expenses — expenditure of funds from bonds.

Part 3 — Licensing

37-43-301. Licensed person to supervise all construction.
37-43-302. License required.
37-43-303. Application — fee.
37-43-304. Repealed.
37-43-305. Examination and qualifications.
37-43-306. Bond to be required.
37-43-307. Annual renewal — fee — revocation for nonrenewal.
37-43-308. Reciprocity.
37-43-309. Complaints and investigations.
37-43-310. Disciplinary procedure.
37-43-311. Repealed.
37-43-312. Penalty.
37-43-313. Disciplinary authority.
37-43-314. Injunctions.

Part 4 — Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensee.

Chapter Cross-References

Ground water, Title 85, ch. 2, part 5.

Part 1
General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and monitoring wells is in the best interest of the public, and the waste and contamination of ground water resources through inefficient or incompetent operations of drillers or makers of water wells and monitoring wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and monitoring wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602; amd. Sec. 1, Ch. 538, L. 1987.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) (a) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water.

(b) The term does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) (a) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

(b) The term does not include:

(i) spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation when the depth is 25 feet or less; or

(ii) an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than the person's own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 728, L. 1985; amd. Sec. 2, Ch. 538, L. 1987; amd. Sec. 1, Ch. 516, L. 1989; amd. Sec. 1402, Ch. 56, L. 2009.

37-43-103. Repealed. Sec. 10, Ch. 728, L. 1985.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells. (1) Any firm, corporation, or partnership may engage in the business of constructing or installing monitoring wells provided a licensed monitoring well constructor is in charge of all monitoring well installation.

(2) The licensed monitoring well constructor must be physically present at the site throughout the construction of the monitoring well.

History: En. Sec. 17, Ch. 538, L. 1987.

Part 2
Board of Water Well Contractors

Part Cross-References

Seal defined, 1-4-201.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-3307.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-43-201. Organization — seal — compensation of members. (1) The board shall annually elect a presiding officer and vice presiding officer.

(2) The board must have a seal with the words "Board of Water Well Contractors" engraved on the seal, and the seal must be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of the seal.

(3) Each appointed member of the board who is not a government employee must receive as compensation for the member's services $50 a day for each day actually engaged in the performance of the duties of the office, including time of travel between the member's home and the places at which the member performs duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana may not receive extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981; amd. Sec. 3, Ch. 538, L. 1987; amd. Sec. 1403, Ch. 56, L. 2009.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) take disciplinary action and issue orders pursuant to this chapter; and

(d) generally perform duties that will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 728, L. 1985; amd. Sec. 4, Ch. 538, L. 1987; amd. Sec. 3, Ch. 516, L. 1989; amd. Sec. 1, Ch. 284, L. 1993.

37-43-203. Renumbered 37-43-314. Code Commissioner, 1993.

37-43-204. Earmarked money for board expenses — expenditure of funds from bonds. (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-309, 37-43-310, and 37-43-313. These funds, other than those to pay any administrative costs, are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 1, Ch. 493, L. 1991; amd. Sec. 6, Ch. 284, L. 1993; amd. Sec. 34, Ch. 422, L. 1997.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.
Application for permit, 85-2-302.
Exceptions to permit requirements — ground water, 85-2-306.
Controlled ground water areas — permits, 85-2-508.

37-43-301. Licensed person to supervise all construction. (1) Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed water well contractor is placed in charge of all water well construction.

(2) The licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.

(3) A licensed water well driller, pursuant to 37-43-305, must be employed by a licensed water well contractor.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 6, Ch. 538, L. 1987.

37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest and requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by the person if:

(i) the land is used by the person for farming, ranching, or agricultural purposes or as the person's residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name and mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that the applicant uses for farming, ranching, or agricultural purposes or as the applicant's residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979; amd. Sec. 4, Ch. 728, L. 1985; amd. Sec. 7, Ch. 538, L. 1987; amd. Sec. 4, Ch. 516, L. 1989; amd. Sec. 1404, Ch. 56, L. 2009.

37-43-303. Application — fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 642, L. 1983; amd. Sec. 5, Ch. 728, L. 1985; amd. Sec. 8, Ch. 538, L. 1987; amd. Sec. 9, Ch. 769, L. 1991.

37-43-304. Repealed. Sec. 18, Ch. 538, L. 1987.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2); amd. Sec. 6, Ch. 728, L. 1985.

37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies the applicant from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application must be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608; amd. Sec. 4, Ch. 642, L. 1983; amd. Sec. 7, Ch. 728, L. 1985; amd. Sec. 9, Ch. 538, L. 1987; amd. Sec. 5, Ch. 516, L. 1989; amd. Sec. 1405, Ch. 56, L. 2009.

37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership.

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609; amd. Sec. 5, Ch. 642, L. 1983; amd. Sec. 8, Ch. 728, L. 1985; amd. Sec. 10, Ch. 538, L. 1987; amd. Sec. 6, Ch. 516, L. 1989; amd. Sec. 1406, Ch. 56, L. 2009.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30.

After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) Subject to subsection (3), if a licensee does not apply for renewal of the license before the first day of a license year and remit to the department the renewal fee, the license must be suspended by the board. Subject to subsection (3), if the license remains suspended for a period of more than 30 days after the first day of a license year, it must be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through the person's own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting for those services, the person shall apply under 37-43-303. Notice of suspension must be given to a licensee when the suspension occurs.

(3) This section may not be interpreted to conflict with the provisions of 37-1-138.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607; amd. Sec. 6, Ch. 642, L. 1983; amd. Sec. 11, Ch. 538, L. 1987; amd. Sec. 10, Ch. 769, L. 1991; amd. Sec. 44, Ch. 271, L. 2003.

37-43-308. Reciprocity. If a person holding a license entitling the person to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state.

History: En. Sec. 8, Ch. 642, L. 1983; amd. Sec. 12, Ch. 538, L. 1987; amd. Sec. 7, Ch. 516, L. 1989; amd. Sec. 1407, Ch. 56, L. 2009.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-43-309. Complaints and investigations. The board may investigate complaints against licensees to determine compliance with the laws and rules of this chapter. Licensees must be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action. The board may require complainants and licensees to appear before the board to discuss complaints and to attempt to settle differences.

History: En. Sec. 3, Ch. 284, L. 1993.

37-43-310. Disciplinary procedure. (1) If, after investigation and attempted settlement under 37-43-309, compliance with lawful requirements is not demonstrated or achieved, the board may initiate discipline by issuing a proposed disciplinary order. The proposed order must state the factual and legal basis for the order and identify the witnesses, documents, logs, and reports relied upon by the board in reaching a decision. Copies of any documents, logs, or reports must be attached to the proposed order.

(2) The board shall mail or deliver a copy of the proposed order to the licensee, along with notice that the licensee may request a hearing to show cause why the order should be rejected or modified. If a hearing is not requested within 20 days, the board shall adopt the proposed order as a final order.

(3) A request for hearing must be in writing and specify which, if any, board witnesses the licensee wishes to cross-examine. If a timely request for hearing is received, the board shall schedule a hearing before the board or assign a hearings examiner to conduct the hearing at a later date to be set by the hearings examiner. The board shall make the specified witnesses available for cross-examination at the hearing.

(4) The licensee has the burden to show cause why the proposed order should be rejected or modified. The licensee may cross-examine the board's witnesses, present evidence, propose alternative discipline, argue issues of law and fact, or otherwise attempt to convince the board that the proposed order should be rejected or modified.

(5) After considering the evidence, proposals, and arguments presented at the hearing, the board shall issue its final order adopting, rejecting, or modifying the proposed order. The final order must state the reason for the adoption, rejection, or modification of the proposed order.

(6) A final disciplinary order may be appealed to the district court in the first judicial district and is reviewable according to the rules and standards for judicial review of contested cases pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 284, L. 1993.

37-43-311. Repealed. Sec. 7, Ch. 284, L. 1993.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610; amd. Sec. 7, Ch. 642, L. 1983.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling, making, altering, or rehabilitating water wells or monitoring wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613; amd. Sec. 13, Ch. 538, L. 1987.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

(c) violating probationary terms of or conditions on a license;

(d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or

(e) failing to maintain qualifications for licensure as specified in 37-43-305.

(3) This section may not be interpreted to conflict with the provisions of 37-1-138.

History: En. Sec. 5, Ch. 284, L. 1993; amd. Sec. 45, Ch. 271, L. 2003.

37-43-314. Injunctions. The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 3, Ch. 728, L. 1985; amd. Sec. 5, Ch. 538, L. 1987; amd. Sec. 2, Ch. 284, L. 1993; Sec. 37-43-203, MCA 1991; redes. 37-43-314 by Code Commissioner, 1993.

Cross-References

Injunctions, Title 27, ch. 19.

Part 4
Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any water well contractor, water well driller, or monitoring well constructor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such water well contractor, water well driller, or monitoring well constructor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: **En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612; amd. Sec. 14, Ch. 538, L. 1987.**

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

37-43-402. Completion of contracts by successor in interest of licensee. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's or monitoring well constructor's rights under a contract or agreement for the drilling, making, or construction of a water well or monitoring well, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells or monitoring wells to the extent necessary to perform the obligations of said licensee under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor or monitoring well constructor.

History: **En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615; amd. Sec. 15, Ch. 538, L. 1987.**

CHAPTERS 44 THROUGH 46
RESERVED

CHAPTER 47
OUTFITTERS AND GUIDES

Part 1 — General

37-47-101. Definitions.
37-47-102. Repealed.
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37-47-318. Fees in addition to annual license fee — allocation.
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37-47-344. Penalties — disposition of fines.
37-47-345. Enforcement.
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37-47-351. Investigators.

Part 4 — Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose.
37-47-402. Duties of outfitters, guides, and professional guides.
37-47-403. Duties of participants.
37-47-404. Responsibility for violations of law.

Part 1
General

37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) "Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.

(3) "Board" means the board of outfitters provided for in 2-15-1773.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

(5) "Consideration" means something of value given or done in exchange for something of value given or done by another.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

(8) "License year" means the period indicated on the face of the license for which the license is valid.

(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201.

(10) "Nonresident" means a person other than a resident.

(11) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

(12) "Participant" means a person using the services offered by a licensed outfitter.

(13) "Professional guide" means a guide who meets experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

(14) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991; amd. Sec. 1, Ch. 328, L. 1995; amd. Sec. 2, Ch. 543, L. 1999; amd. Sec. 142, Ch. 483, L. 2001; amd. Sec. 97, Ch. 467, L. 2005.

Cross-References

Outfitter to perform all activities listed under definition or more restrictive special license, 37-47-308.

37-47-102. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.

37-47-103. Publication of license information. (1) The department shall prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters.

(2) The pamphlet described in subsection (1) must be available for free distribution as early as possible each calendar year but not later than the second Friday in March of each year.

(3) The pamphlet must contain the names, license numbers, and addresses of only those outfitters who have a currently valid license.

History: En. Sec. 23, Ch. 502, L. 2007.

Part 2
Board of Outfitters

37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(2) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(3) establish outfitter standards, guide standards, and professional guide standards;

(4) adopt:

(a) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(b) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chapter for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(c) rules specifying standards for review and approval of proposed new operations plans involving hunting use. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter.

(d) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access enhancement programs.

(5) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause;

(6) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (4)(d);

(7) maintain records of net client hunter use.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993; amd. Sec. 3, Ch. 328, L. 1995; amd. Sec. 3, Ch. 543, L. 1999; amd. Sec. 98, Ch. 467, L. 2005; amd. Sec. 45, Ch. 44, L. 2007; amd. Sec. 2, Ch. 328, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 328 in (4)(c) in first sentence after "use" deleted "or the proposed expansion of net client hunter use, as set forth in 37-47-316 and 37-47-317, under an outfitter's existing operations plan" and deleted former third sentence that read: "Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the proposal who do not make use of outfitter services"; inserted (7) regarding records of net client hunter use; and made minor changes in style. Amendment effective October 1, 2011.

37-47-202. Executive director. The department may hire an executive director to assist the board in carrying out its duties under this chapter.

History: En. Sec. 1, Ch. 183, L. 1993; amd. Sec. 32, Ch. 492, L. 2001; amd. Sec. 11, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies"; and made minor changes in style. Amendment effective October 1, 2011.

Part 3
Licensing

37-47-301. License required — services performed — standards. (1) A person may not act as an outfitter, guide, or professional guide or advertise or otherwise represent to the public that the person is an outfitter, guide, or professional guide without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by a participant, the outfitter shall keep and submit records as required by the board.

(3) Outfitters and guides, professional guides, and other employees of an outfitter may not shoot, kill, or take big game animals for or in competition with those employing them while acting as outfitters, guides, professional guides, or employees of an outfitter.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) An outfitter may not hire or retain a guide or professional guide who does not hold a current license as provided under this part.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993; amd. Sec. 4, Ch. 328, L. 1995.

37-47-302. Outfitter's qualifications. An applicant for an outfitter's license or renewal of a license must meet the following qualifications:

(1) be 18 years of age or older, be physically capable and mentally competent to perform the duties of an outfitter, and meet experience, training, and testing requirements as prescribed by board rule;

(2) own, hold under written lease, or contract for or represent a company, corporation, or partnership who owns, holds under written lease, or contracts for the equipment and facilities that are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent); and

(3) have demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws related to fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993; amd. Sec. 5, Ch. 328, L. 1995; amd. Sec. 39, Ch. 109, L. 2009; amd. Sec. 1, Ch. 179, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 179 in (2) in two places after "lease" inserted reference to contract for; and made minor changes in style. Amendment effective April 14, 2011.

37-47-303. Guide's and professional guide's qualifications. (1) An applicant for a guide's or professional guide's license must meet the following qualifications:

(a) be 18 years of age or older and be physically capable and mentally competent to perform the duties of a guide or professional guide;

(b) be endorsed and recommended by an outfitter with a valid license, unless otherwise qualified under guide or professional guide standards established by the board pursuant to 37-47-201(4); and

(c) have been issued a valid wildlife conservation license.

(2) In addition to the requirements listed in subsection (1), an applicant for licensure as a professional guide must meet additional experience requirements, to be set by board rule, and may be required to show proof of training or pass a qualifying examination when required by board rule.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993; amd. Sec. 6, Ch. 328, L. 1995; amd. Sec. 1, Ch. 172, L. 2005.

37-47-304. Application. (1) Each applicant for an outfitter's, guide's, or professional guide's license shall apply for a license on a form furnished by the department.

(2) The application for an outfitter's license forms the basis for the outfitter's operations plan and must include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including:

(i) years of experience as an outfitter, guide, or professional guide;

(ii) the applicant's knowledge of areas in which the applicant has operated and intends to operate; and

(iii) the applicant's ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter for each guide and professional guide to be employed or retained as an independent contractor, stating that the guide or professional guide is to be employed by the outfitter and stating that the outfitter recommends the guide or professional guide for licensure;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned, leased, or contracted for by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of participants to be accompanied at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant intends to provide services or establish hunting camps; and

(i) the boundaries of the proposed operation, stating when applicable:

(i) the name and portion of river;

(ii) the county of location;

(iii) the legal owner of the property;

(iv) the name of the ranch;

(v) the proposed service, including the type of game sought;

(vi) the name of the agency granting use authority; and

(vii) other means of identifying boundaries as established by board rule.

(3) An application for an outfitter's license must be in the name of an individual person only. An application involving corporations, proprietorships, or partnerships must be made by one individual person who qualifies under the provisions of this part. A license issued pursuant to this part must be in the name of that person. Any revocation or suspension of a license is binding

upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(4) Application must be made to and filed with the board.

(5) Only one application for an outfitter's license may be made in any license year. If an application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993; amd. Sec. 7, Ch. 328, L. 1995; amd. Sec. 2, Ch. 196, L. 2003; amd. Sec. 99, Ch. 467, L. 2005; amd. Sec. 2, Ch. 179, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 179 in (2)(f) after "leased" inserted "or contracted for"; and made minor changes in style. Amendment effective April 14, 2011.

37-47-305. Outfitter's examination. Each applicant for an outfitter's license, after meeting the experience and training specifications and other qualifications set by this chapter or rules adopted pursuant to this chapter, is entitled to take and must pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of participants. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;
(2) practical woodsmanship;
(3) general knowledge of big game;
(4) field preparation of trophies;
(5) care of game meat;
(6) use of outfitter's gear as listed on the application;
(7) knowledge of area and terrain;
(8) knowledge of firearms;
(9) federal and state regulations as applicable to outfitting;
(10) first aid;
(11) boat safety;
(12) water safety;
(13) care and safety of livestock.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993; amd. Sec. 8, Ch. 328, L. 1995.

37-47-306. Fees. (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter.

(4) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 9, Ch. 328, L. 1995; amd. Sec. 4, Ch. 543, L. 1999.

37-47-307. Investigation of applicant — issuance or denial of license. (1) The department shall investigate each applicant for an outfitter's, guide's, or professional guide's license. The board shall determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this chapter or rules adopted pursuant to this chapter. In the event that any application for a license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter or rules adopted pursuant to this chapter and upon completing an application for license renewal on a form provided by the board.

(4) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220, L. 1993; amd. Sec. 10, Ch. 328, L. 1995; amd. Sec. 100, Ch. 429, L. 1995; amd. Sec. 46, Ch. 271, L. 2003.

37-47-308. Kinds of licenses. (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

Cross-References

Limit on application for outfitter's or guide's license, 37-47-304.

37-47-309. Repealed. Sec. 22, Ch. 328, L. 1995.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

37-47-310. Transfer or amendment of outfitter's license — transfer of river-use days to new owner of fishing outfitter business. (1) An outfitter's license may not be transferred.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, a person designated by the family of an outfitter who is deceased or incapacitated due to physical or mental disease or injury or who is unable to carry out the responsibilities of an outfitter due to the outfitter's status as an active member of the military may continue to provide outfitting services for the outfitter's unexpired license year, or until the family sells the outfitting business, until the designee obtains an outfitter license.

(4) When a fishing outfitter's business is sold or transferred in its entirety, any river-use days that have been allocated to that fishing outfitter through the fishing outfitter's historic use of or activities on restricted-use streams are transferable to the new owner of the fishing outfitter's business. Upon the sale or transfer of a fishing outfitter's business, the outfitter who sells or transfers the business shall notify the new owner that the use of any transferred river-use days is subject to change pursuant to rules adopted by the fish, wildlife, and parks commission and that a property right does not attach to the transferred river-use days.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993; amd. Sec. 1, Ch. 91, L. 2003; amd. Sec. 1, Ch. 197, L. 2005; amd. Sec. 12, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (3) after "by the family of" substituted current text for "a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business". Amendment effective October 1, 2011.

37-47-311. Limit one license. An individual may not hold more than one outfitter's license either for the individual's own benefit or for the use and benefit of a partnership, limited liability partnership, limited liability company, or corporation. However, the name of a partnership, limited liability partnership, limited liability company, or corporation may appear on more than one current outfitter's license and within more than one operation plan filed with the board.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 197, L. 2005.

37-47-312. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

37-47-313. Shuttle and rental services — exemption. (1) Nothing in this chapter prohibits the furnishing of shuttle or rental services as long as those services do not include in-field assistance to a customer.

(2) In-field assistance includes but is not limited to:

(a) setting up a camp;

(b) field instruction for the activity to be conducted by the customer; or

(c) other services considered to be services of an outfitter, as defined in 37-47-101.

History: En. Sec. 2, Ch. 328, L. 1995.

37-47-314. Terminated. Sec. 26, Ch. 328, L. 1995.

History: En. Sec. 11, Ch. 328, L. 1995.

37-47-315. Terminated. Sec. 6, Ch. 544, L. 1999.

History: En. Sec. 11, Ch. 459, L. 1995; amd. Sec. 1, Ch. 544, L. 1999.

37-47-316. Transfer of net client hunter use upon transfer of operations plan. The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 5 ½ years after transfer, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 5 ½ years, not to exceed the total authorized by the NCHU.

History: En. Sec. 5, Ch. 543, L. 1999; amd. Sec. 1, Ch. 393, L. 2001; amd. Sec. 3, Ch. 328, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 328 deleted former (1) through (4) that read: "(1) An outfitter who wishes to establish or expand NCHU shall present an expansion request to the board. A newly licensed outfitter licensed after April 28, 2001, has 5 1/2 years from the date of first licensure to establish NCHU, unless the newly licensed outfitter is purchasing the business of an existing outfitter, in which case the provisions of subsection (5) apply. The board shall evaluate the request based on the criteria provided in 37-47-317.

(2) For any establishment or expansion of NCHU approved by the board after March 1, 1996, the outfitter has until December 31, 2004, to establish the new NCHU. After December 31, 2004, the outfitter's client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request. This subsection (2) does not apply to an outfitter newly licensed after April 28, 2001.

(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:

(a) 10% for an outfitter with 1 to 50 clients;

(b) 8% for an outfitter with 51 to 100 clients; and

(c) 2% for an outfitter with 101 to 300 clients.

(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion"; and made minor changes in style. Amendment effective October 1, 2011.

37-47-317. Repealed. Sec. 5, Ch. 328, L. 2011.

History: En. Sec. 6, Ch. 543, L. 1999.

37-47-318. Fees in addition to annual license fee — allocation. In addition to the fees required in 37-47-306 for an outfitter providing hunting services, an outfitter shall pay an annual fee of $2 for each client served. The fee collected pursuant to this section must be expended by the board pursuant to the authority in 37-47-306 and by the department of fish, wildlife, and parks pursuant to the authority in 87-1-601 and used to fund administrative costs related to implementation of this chapter. Revenue generated by the fee must be split equally between the board and the department of fish, wildlife, and parks.

History: En. Sec. 7, Ch. 543, L. 1999; amd. Sec. 21, Ch. 502, L. 2007; amd. Sec. 4, Ch. 328, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 328 in first sentence near middle after "services," deleted "the following fees apply"; deleted former (1)(b) through (1)(d) that read: "(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) (i) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations.

(ii) A fee is not required for the following:

(A) an outfitter's base of operations camp;

(B) camps established before January 1, 1999;

(C) camps established on public land when use is directly regulated by public land use policies; or

(D) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request"; after "chapter" deleted "The fees collected must be allocated as follows"; after "generated by the" substituted "fee" for "$2 fee imposed in subsection (1)(a), the $500 fee imposed in subsection (1)(b), and the $2,000 fee imposed in subsection (1)(d)"; deleted former (2)(b) that read: "(b) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board"; and made minor changes in style. Amendment effective October 1, 2011.

37-47-319 through 37-47-340 reserved.

37-47-341. Grounds for denial, suspension, or revocation of license. A license or right to apply for and hold a license issued under this part may be denied, suspended, or revoked or other disciplinary conditions may be applied upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license, as required under this chapter and rules adopted pursuant to this chapter;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law.

(5) one conviction or bond forfeiture as to a violation of the fish and game or outfitting laws or regulations of any state or the United States;

(6) a substantial breach of a contract with a participant provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide or professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter, guide, or professional guide that causes an accident or injury to the person or property of a participant;

(9) misconduct as defined by board rule; or

(10) any violation of this chapter or a rule adopted pursuant to this chapter.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993; amd. Sec. 12, Ch. 328, L. 1995; amd. Sec. 22, Ch. 502, L. 2007.

37-47-342. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

37-47-343. Appeal procedure. A person who feels aggrieved by a final order of the board denying issuance of a license or suspending or revoking a license as an outfitter, guide, or professional guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993; amd. Sec. 13, Ch. 328, L. 1995.

Cross-References

Judicial review of contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable, unless otherwise specified, by a fine not exceeding $500.

(2) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

History: En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993; amd. Sec. 2, Ch. 445, L. 2007.

37-47-345. Enforcement. Investigations and arrests for violations of this chapter or rules adopted pursuant to this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987; amd. Sec. 14, Ch. 328, L. 1995.

Cross-References

Enforcement powers of wardens, 87-1-506.

37-47-346. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 220, L. 1993.

37-47-347 through 37-47-350 reserved.

37-47-351. Investigators. The department may hire investigators to assist the board in investigations and inspections authorized by this chapter.

History: En. Sec. 20, Ch. 328, L. 1995; amd. Sec. 13, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (2) that read: "(2) To qualify as an investigator, a person must:

(a) be a citizen of the United States and be a Montana resident;

(b) have knowledge of outfitting and guiding through prior experience as a licensed outfitter, guide, or professional guide or as a regulator of the outfitting profession; and

(c) have not less than 2 years' experience as a licensed private investigator or as an investigator, detective, special agent, or peace officer of a city, county, or state or of a federal agency"; and made minor changes in style. Amendment effective October 1, 2011.

Part 4
Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose. It is recognized that some activities conducted by outfitters, guides, and professional guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that may be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters, guides, and professional guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or is considered to have voluntarily assumed the risk of loss or damage.

History: En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 328, L. 1995.

37-47-402. Duties of outfitters, guides, and professional guides. An outfitter, guide, or professional guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by board rule.

History: En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993; amd. Sec. 16, Ch. 328, L. 1995.

37-47-403. Duties of participants. (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter, guide, or professional guide in this state;

(b) receive permission from the outfitter, guide, or professional guide prior to embarking on any self-initiated activity and inform the outfitter, guide, or professional guide of the participant's plans and intentions upon receiving permission to engage in the self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's, guide's, or professional guide's activities when those activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's, guide's, or professional guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter, guide, or professional guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to the participant or any other person.

History: En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 17, Ch. 328, L. 1995.

37-47-404. Responsibility for violations of law. (1) A person accompanying a hunting or fishing party as an outfitter, guide, or professional guide is equally responsible with any person or party engaging the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, guide, or professional guide and the outfitter, guide, or professional guide was not an active participant. An outfitter, guide, or professional guide who willfully fails or refuses to report any violation of fish and game laws is liable for the penalties provided in this chapter. If a guide or professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter engaging the guide or professional guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter, guide, or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter, guide, or professional guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain an outfitter unless the outfitter is currently licensed in accordance with the laws of the state of Montana. A person may not use the services of a guide or professional guide and a guide or professional guide may not offer services unless the services are obtained through an endorsing outfitter.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993; amd. Sec. 18, Ch. 328, L. 1995; amd. Sec. 40, Ch. 109, L. 2009.

CHAPTER 48

PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

Part 1 — General Provisions

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37-48-102. Definitions.
37-48-103. Registration and licensing requirements — fees.
37-48-104 and 37-48-105 reserved.
37-48-106. Licensure.
37-48-107. Provisional license.
37-48-108. Background investigations — waiver.
37-48-109 through 37-48-112 reserved.
37-48-113. Rules — program criteria — application evaluations.
37-48-114 reserved.
37-48-115. Department or board inspection.
37-48-116 and 37-48-117 reserved.
37-48-118. Penalty for failure to obtain license — notice of violation.

Part 1
General Provisions

37-48-101. Purpose. The purpose of the board is to license and regulate private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

History: En. Sec. 2, Ch. 294, L. 2005; amd. Sec. 7, Ch. 178, L. 2007.

37-48-102. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Direct access" means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(4) "Manager" means an individual who has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(5) "Plan of operation" means the operational structures and parameters describing the program as identified in 37-48-103 and as required by the board by rule.

(6) (a) "Program" means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) "Program participant" means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.

(8) "Worker affiliated with the program" means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

History: En. Sec. 3, Ch. 294, L. 2005; amd. Sec. 8, Ch. 178, L. 2007.

37-48-103. Registration and licensing requirements — fees. (1) The board shall develop and adopt rules and set fees for mandatory registration and licensing programs. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule.

(2) The board shall require the following information to be provided for licensing. The information includes but is not limited to:

(a) a description of the program and facility;

(b) a description of the goals and objectives of the program for program participants;

(c) a description of the population served by the program, including the maximum number of program participants to be served and the gender of program participants;

(d) the location and contact information for each program, including the person responsible for the conduct of the program;

(e) a list of professional and supervisory employees and relevant credentials and other qualifications;

(f) the average daily census;

(g) a copy of program policies and procedures on:

(i) admission;

(ii) behavior management;

(iii) communication with family members;

(iv) the availability of routine and emergency medical and psychological care;

(v) medication management;

(h) any information that the board may require to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program who has direct access to program participants, including information pertaining to criminal convictions; and

(i) any other related information specified by the board by rule.

(3) The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory. The board shall make available to the public information on the name, address, and contact information for each licensed program.

History: En. Sec. 4, Ch. 294, L. 2005; amd. Sec. 9, Ch. 178, L. 2007.

37-48-104 and 37-48-105 reserved.

37-48-106. Licensure. (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 3 years or may issue a provisional license as provided in 37-48-107.

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred without the approval of the board.

(4) The board may suspend or revoke a license if the board, upon a hearing, as provided in 37-1-131, determines that the program is not operated in a manner consistent with the rules adopted and is not in substantial compliance with the program's plan of operation.

(5) The board may approve a modification of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

(a) program operations are discontinued;

(b) ownership of the program is transferred without approval of the board;

(c) the board suspends or revokes the license; or

(d) the license expires without being renewed.

(7) The program license must be displayed in a conspicuous place near the admitting office of the program.

History: En. Sec. 1, Ch. 178, L. 2007.

37-48-107. Provisional license. (1) The board may grant a provisional license to a program:

(a) that was registered with the board as of December 31, 2006; and

(b) that has submitted to the board:

(i) a completed application;

(ii) background materials, as described in 37-48-108, necessary to conduct background investigations on the program's managers and workers affiliated with the program; and

(iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

(a) the program's failure to pass the onsite inspection;

(b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or

(c) the determination that one or more of the workers affiliated with the program with direct access to program participants are considered unsuitable, based on background information, for having direct access to program participants although the program upon notification may take corrective action within 30 days.

(4) If the program shows good cause, the board may extend a provisional license to complete background investigations on managers and workers affiliated with the program.

(5) The board may decline to grant a provisional license or a license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that had previously been denied a provisional license or a license.

History: **En. Sec. 2, Ch. 178, L. 2007.**

37-48-108. Background investigations — waiver. (1) The program shall submit background checks for the program manager and each worker affiliated with the program who has or will have direct access to program participants in a manner prescribed by the board or shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the department of justice and the federal bureau of investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 1, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

History: **En. Sec. 3, Ch. 178, L. 2007.**

37-48-109 through 37-48-112 reserved.

37-48-113. Rules — program criteria — application evaluations. (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

(a) meets the specific minimum criteria set by rule;

(b) reasonably provides for the safety and well-being of program participants; and

(c) is consistent with the goals and objectives stated in the plan of operation.

(3) The board shall adopt rules by October 1, 2008, to begin licensing the programs, and the programs have 30 days from the effective date to apply for a license once the rules are effective.

History: **En. Sec. 4, Ch. 178, L. 2007.**

37-48-114 reserved.

37-48-115. Department or board inspection. (1) The department or board may enter and inspect, without prior notice, program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department or board may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department or board shall conduct an onsite inspection of:

(i) each program applying for a license; and

(ii) each licensed program at least once every 3 years.

(b) Instead of an onsite inspection of a licensed program, the department or board may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

History: En. Sec. 5, Ch. 178, L. 2007.

37-48-116 and 37-48-117 reserved.

37-48-118. Penalty for failure to obtain license — notice of violation. (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

History: En. Sec. 6, Ch. 178, L. 2007.

CHAPTER 49
RESERVED

CHAPTER 50
PUBLIC ACCOUNTANTS

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Part 1
General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Affiliated entity" means an entity owned, leased, or controlled by a firm through common employment or any other service arrangement, including but not limited to financial or investment services, insurance, real estate, and employee benefits services.

(2) "Agreed-upon procedures engagement" means an engagement performed in accordance with applicable attestation standards and in which a firm or person is engaged to issue a written finding that:

(a) is based on specific procedures that the specified parties agree are sufficient for their purposes;

(b) is restricted to the specified parties; and

(c) does not provide an opinion or negative assurance.

(3) "Attest" means providing the following services:

(a) an audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) a review of a financial statement to be performed in accordance with the statements on standards for accounting and review services;

(c) an examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements;

(d) an engagement to be performed in accordance with the auditing standards of the public company oversight board; and

(e) an agreed-upon procedures engagement to be performed in accordance with the statements on standards for attestation engagements.

(4) "Board" means the board of public accountants provided for in 2-15-1756.

(5) "Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that presents, in the form of financial statements, information that is the representation of owners without undertaking to express any assurance on the statements.

(6) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(7) "Firm" means a sole proprietorship, partnership, professional corporation, or limited liability company engaged in the practice of public accounting.

(8) "Home office" is the location specified by the client as the address where a service described in 37-50-325(4) is directed.

(9) "Peer review" means a board-approved study, appraisal, or review of one or more aspects of the attest or compilation work of a permittee or licensee of a registered firm in the practice of public accounting, by a person or persons who hold licenses in this or another jurisdiction and who are not affiliated with the person or firm being reviewed.

(10) "Practice of public accounting" means performing or offering to perform, by a person certified under 37-50-302, licensed under 37-50-303, or holding a practice privilege under 37-50-325, for a client or potential client one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

(11) "Principal place of business" means the office location designated by the licensee for the purposes of substantial equivalency.

(12) "Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or subsequent acts or that an individual certified public accountant's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency, the board shall take into account the qualifications without regard to the sequence in which the experience, education, and examination requirements were attained.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989; amd. Sec. 143, Ch. 483, L. 2001; amd. Sec. 41, Ch. 109, L. 2009.

37-50-102. Exemptions. This chapter does not prohibit any person who is not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314, a firm composed of certified public accountants or licensed public accountants registered under this chapter, or a foreign accountant whose credentials have been recognized under 37-50-313. However, the employee or assistant may not issue any accounting or financial statement in the employee's or assistant's name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983; amd. Sec. 3, Ch. 375, L. 2003; amd. Sec. 42, Ch. 109, L. 2009.

Part 2
Board of Public Accountants

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1756.
Entries in official books and records prima facie evidence, 26-1-605.
Entry made by officer or Board prima facie evidence, 26-1-606.
Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).
Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).
Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Board to adopt rules on conduct, 37-1-131.

37-50-201. Organization — general rulemaking power — seal — records. (1) The board shall elect annually a presiding officer and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) The board must have a seal that must be judicially noticed.

(4) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: **En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983; amd. Sec. 33, Ch. 492, L. 2001.**

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.**

37-50-203. Rules of board. (1) The board may adopt rules, consistent with the purposes of this chapter, that it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial permit; and

(e) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

(3) The board may adopt rules:

(a) governing firms and other types of entities practicing public accounting, including but not limited to rules concerning style, name, title, and affiliation with other organizations;

(b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired capital; and

(ii) prescribing joint and several liability for torts relating to professional services for shareholders of a firm or owners of other types of entities that fail to comply with standards established pursuant to subsection (3)(b)(i); and

(c) establishing education and experience qualifications for out-of-state and foreign accountants seeking permits, certificates, or licenses to practice in Montana.

History: **En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983; amd. Sec. 101, Ch. 429, L. 1995; amd. Sec. 42, Ch. 492, L. 1997; amd. Sec. 4, Ch. 375, L. 2003; amd. Sec. 43, Ch. 109, L. 2009.**

37-50-204. Rulemaking powers relating to examinations. The board may adopt rules for the following:

(1) the terms and conditions under which a candidate shall obtain credit for passing the required examination or portions of the examination;

(2) the period of time that candidates are allowed to apply for reexamination; and

(3) the fees to be charged each candidate for examinations and special examinations, which must be commensurate with costs.

History: **En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826; amd. Sec. 3, Ch. 196, L. 2003.**

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: **En. Sec. 21, Ch. 684, L. 1979.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) It is not a violation of this chapter for a firm that is not registered under 37-50-335 and that does not have an office in this state to provide its professional services and to practice public accounting in this state and use the title "CPA" or "CPA firm" so long as it complies with the exemption requirements of 37-50-335(2).

(2) A person may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a certified public accountant unless the person holds a current certificate as a certified public accountant under this chapter or qualifies for the practice privilege under 37-50-325. However, a foreign accountant whose credentials are recognized under the provisions of 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received.

(3) A firm may not assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of certified public accountants pursuant to the requirements of 37-50-330 unless it is registered as required under 37-50-335 or meets the conditions to be exempt from registration as set forth in 37-50-335(2).

(4) A person may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the person is a public accountant unless the person holds a current license as a licensed public accountant under this chapter.

(5) A firm may not assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device indicating that the firm is composed of public accountants unless it is registered as required under 37-50-335.

(6) A person or firm may not assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant whose credentials are recognized under 37-50-313 shall use the title under which the foreign accountant is generally known in the foreign country, followed by the name of the country from which the foreign accountant's certificate, license, or degree was received, and a person who is licensed as an enrolled agent by the internal revenue service may use the title "enrolled agent" or the abbreviation "EA".

(7) A person may not sign or affix the person's name or any trade or assumed name used by the person in the person's profession or business with any wording indicating that the person has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless the person holds a current permit issued under 37-50-314 and all of the person's offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing a signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office that the person holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of the official's or employee's public duties.

(8) A person may not sign or affix a firm name with any wording indicating that it is a firm composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the firm conforms to the requirements of 37-50-330 and is registered as required under 37-50-335.

(9) A person may not assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a firm or in conjunction with the designation "and company" or "and co." or a similar designation if there is in fact no bona fide firm that has been formed subject to the provisions of 37-50-330 and registered under 37-50-335. However, it is lawful for a sole proprietor to continue the use of a deceased's name in connection with the sole proprietor's business for a reasonable period of time after the death of a former partner or co-owner.

History: **En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983; amd. Sec. 2, Ch. 123, L. 2001; amd. Sec. 5, Ch. 375, L. 2003; amd. Sec. 44, Ch. 109, L. 2009.**

37-50-302. Certified public accountants — certification — qualifications and requirements. The board shall grant an initial certificate as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: **En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.**

37-50-303. Public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a licensed public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter and board rules; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: **En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.**

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) A person serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering the armed forces represented to the public that the person was a public accountant and who was engaged as a principal in this state in the practice of public accounting as the person's principal occupation prior to service in the armed forces may register with the department within 6 months after the date of the person's separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) To be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.

History: **En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821; amd. Sec. 1, Ch. 218, L. 1993; amd. Sec. 100, Ch. 467, L. 2005.**

37-50-305. Education requirements. (1) A candidate for initial certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

(2) For the purposes of this section, "initial certification" means that the candidate has never been certified as a certified public accountant or licensed as a licensed public accountant by any jurisdiction.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989; amd. Sec. 4, Ch. 196, L. 2003.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983; amd. Sec. 21, Ch. 230, L. 1999; amd. Sec. 5, Ch. 196, L. 2003.

37-50-309. Credit for examinations taken in other jurisdictions. The board may by rule provide for granting credit to a candidate for the satisfactory completion of an examination in any one or more of the subjects of examination given by the licensing authority in another jurisdiction.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979; amd. Sec. 6, Ch. 196, L. 2003.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible who is the holder of:

(1) a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state;

(2) a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a certified public accountant in this state, which is then in full force and effect; or

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983; amd. Sec. 6, Ch. 375, L. 2003.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible who is the holder of:

(1) a license as a licensed public accountant, then in full force and effect, issued under the laws of any state;

(2) a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country, comparable to that of a licensed public accountant in this state, which is then in full force and effect; or

(3) a certificate, license, or degree that the board considers to be subject to requirements or qualifications substantially equivalent to or greater than the requirements of this state at the time of the holder's application.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983; amd. Sec. 7, Ch. 375, L. 2003.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-313. Recognition of credentials of foreign accountants — restriction on title used — practice. (1) The board may in its discretion recognize the credentials of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in that country. A person whose credentials are recognized may use only the title under which the person is generally known in that country, followed by the name of the country from which the person received the certificate, license, or degree.

(2) A person whose credentials are recognized by the board may practice public accounting under the terms and conditions established by the board.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828; amd. Sec. 8, Ch. 375, L. 2003.

37-50-314. Permit required — display. (1) A person may not engage in the practice of public accounting in this state without a current permit issued by the department. A permit to engage in the practice of public accounting in this state must be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) The current permit to engage in the practice of public accounting must be prominently displayed for public inspection.

(3) A person qualifying for a practice privilege under 37-50-325(1) or (2) is exempt from this requirement.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983; amd. Sec. 102, Ch. 429, L. 1995; amd. Sec. 43, Ch. 492, L. 1997; amd. Sec. 45, Ch. 109, L. 2009.

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-50-316. Other license fees prohibited. No certificate, permit, or license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.

37-50-317. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 13, Ch. 335, L. 1983; amd. Sec. 103, Ch. 429, L. 1995; amd. Sec. 44, Ch. 492, L. 1997; amd. Sec. 47, Ch. 271, L. 2003.

37-50-318 through 37-50-320 reserved.

37-50-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

37-50-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

37-50-323. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 1, Ch. 541, L. 2005.

37-50-324. Repealed. Sec. 51, Ch. 109, L. 2009.

History: En. Sec. 2, Ch. 541, L. 2005.

37-50-325. Practice privilege for nonresident certified public accountant — rules. (1) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314.

(b) A person who offers or renders professional services under this section, whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (1).

(2) (a) A person whose principal place of business is not in this state and who holds a valid license as a certified public accountant from any state that the national association of state boards of accountancy's national qualification appraisal service or a successor organization has not verified to be in substantial equivalence with the certified public accountant licensure requirements of the Uniform Accountancy Act or a subsequent act of the American institute of certified public accountants/national association of state boards of accountancy has qualifications substantially equivalent to this state's requirements and has all the privileges of persons holding a certificate and a permit of this state without the need to obtain a certificate under 37-50-302 or a permit under 37-50-314 if the person obtains verification from the national association of state boards of accountancy's national qualification appraisal service that the person's CPA qualifications are substantially equivalent to the CPA licensure requirements of the Uniform Accountancy Act of the American institute of certified public accountants/national association of state boards of accountancy.

(b) A person who has passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012, is exempt from the education requirements in the Uniform Accountancy Act or a subsequent act for purposes of this subsection (2).

(c) A person who offers or renders professional services under this subsection (2), whether in person, by mail, by telephone, or by electronic means, is granted practice privileges in this state and no notice, fee, or other submission is required. The person is subject to the requirements of subsections (3) and (4) and this subsection (2).

(3) A licensee of another state exercising the privilege under this section and the firm that employs that person, as a condition of the grant of this privilege:

(a) are subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(b) shall comply with this chapter and the board's rules;

(c) shall cease offering or rendering professional services in this state individually or on behalf of a firm if the license from the state of the person's principal place of business is no longer valid; and

(d) shall accept the appointment of the state board that issued the license as the agent upon whom process may be served in any action or proceeding by the board of public accountants against the licensee.

(4) A person who has been granted practice privileges under this section and who, for any client with its home office in this state, performs any attest services or compilations may do so only through a firm registered under 37-50-335.

History: En. Sec. 1, Ch. 109, L. 2009.

37-50-326 through 37-50-329 reserved.

37-50-330. Compliance with ownership requirements — firm registration. (1) A firm composed of certified public accountants or a firm composed of public accountants that is or plans to become engaged in the practice of public accounting may include persons who are not licensed as public accountants or certified as certified public accountants if:

(a) the firm designates an accountant who is licensed or certified in this state or, in the case of a firm that must be registered pursuant to 37-50-335, a licensee of another state who meets the requirements set out in 37-50-325(1) or (2) to be responsible for the proper registration of the firm;

(b) a simple majority of ownership in the firm, in terms of equity and voting rights, is held by accountants who are licensed or certified accountants in this state or in another substantially equivalent jurisdiction or meet the requirements of 37-50-325(2);

(c) all persons with an ownership interest in the firm are individuals actively participating in the business of the firm or its affiliated entities; and

(d) any person with an ownership interest in the firm who is not licensed or certified as an accountant and who holds a professional license, registration, or certification issued by this state or another jurisdiction is in compliance with the requirements for that license, registration, or certification.

(2) An accountant licensed or certified in this state or a person qualifying for practice privileges under 37-50-325 who holds an ownership interest in a firm, who is responsible for supervising attest or compilation services, and who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm is responsible for all attest or compilation services.

(3) A person licensed or certified in this state and a person qualifying for practice privileges under 37-50-325 who signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm must meet the competency requirements of 37-50-203(2)(a).

(4) (a) A firm that is no longer in compliance with the ownership requirements of subsection (1)(b) shall give notice to the board within 90 days of the noncompliance.

(b) The board shall grant the firm a reasonable amount of time to reestablish compliance with the ownership requirements of subsection (1)(b). The time granted by the board to a firm to reestablish compliance may not be less than 90 days from the date the board receives the firm's notice of noncompliance.

(c) The failure of a firm to reestablish compliance with the ownership requirements of subsection (1)(b) is grounds for the board to suspend or revoke the firm's registration required by 37-50-335.

History: En. Sec. 1, Ch. 123, L. 2001; amd. Sec. 46, Ch. 109, L. 2009.

37-50-331. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

37-50-332. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.

37-50-333. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.

37-50-334. Repealed. Sec. 3, Ch. 123, L. 2001.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

37-50-335. Registration of firms — exemptions. (1) The following firms shall register annually with the department:

(a) those with an office in this state performing attest services and compilations;

(b) those with an office in this state that use the title "CPA" or "CPA firm"; and

(c) those that do not have an office in this state but perform attest services and compilations for a client having its home office in this state.

(d) A fee may not be charged for the annual registration required in subsection (1)(c).

(2) A firm that undergoes a board-sanctioned compliance or peer review process and receives an acceptable, a pass, or a pass with deficiencies rating for these services and completes all remediation in its principal place of business is exempt from registration.

(3) A firm that is not subject to the requirements of subsection (1) may perform other professional services while using the title "CPA" or "CPA firm" in this state without registering with the department only if:

(a) it performs the services through a person with practice privileges under 37-50-325; and

(b) it can lawfully perform the services in the state where persons with practice privileges have their principal place of business.

(4) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, by a firm of certified public accountants, by a licensed public accountant, by a firm of licensed public accountants, or by a foreign accountant recognized under 37-50-313 shall register annually with the department. A fee may not be charged for this registration.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983; amd. Sec. 9, Ch. 375, L. 2003; amd. Sec. 47, Ch. 109, L. 2009.

37-50-336. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter upon its own motion, upon a complaint made by the board of accountancy of another state, or upon the complaint of a person.

(2) A person licensed or certified in this state offering or rendering services or using a "CPA" title in another state is subject to disciplinary action in this state for an act committed in another state where the licensee would be subject to discipline for the act committed in the other state.

(3) A person licensed or certified in another state offering or rendering services or using a "CPA" title in this state is subject to disciplinary action in this state for an act committed in this state for which a licensee in this state would be subject to discipline.

(4) Hearings and rulemaking proceedings are governed by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836; amd. Sec. 48, Ch. 109, L. 2009.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

Part 4
Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, issues or permits the issuance of any false statement of the financial transactions, standing, or condition of any firm or individual business undertaking is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $2,000, be imprisoned for a period of not less than 90 days or more than 1 year, or both.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808; amd. Sec. 49, Ch. 109, L. 2009.

37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, or firm engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, or firm and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983; amd. Sec. 1, Ch. 82, L. 1993; amd. Sec. 50, Ch. 109, L. 2009.

Cross-References

Evidence — privileges, Title 26, ch. 1, part 8.

37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the member after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within that person's knowledge. However, the person may not be questioned about the person's testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to a member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

History: En. Sec. 1, Ch. 197, L. 1991; amd. Sec. 1408, Ch. 56, L. 2009.

CHAPTER 51
REAL ESTATE BROKERS AND SALESPERSONS

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37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees.
37-51-608. Penalties — criminal — civil.

Chapter Cross-References

Licensed broker — exemption from regulation of escrow business, 32-7-103.

Part 1
General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) (a) "Adverse material fact" means a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that:

(i) materially affects the value, affects structural integrity, or presents a documented health risk to occupants of the property; or

(ii) materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.

(b) The term does not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesperson the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (4)(a) through (4)(f).

(5) "Buyer" means a person who is interested in acquiring an ownership interest in real property or who has entered into an agreement to acquire an interest in real property. The term includes tenants or potential tenants with respect to leases or rental agreements of real property.

(6) "Buyer agent" means a broker or salesperson who, pursuant to a written buyer broker agreement, is acting as the agent of the buyer in a real estate transaction and includes a buyer subagent and an in-house buyer agent designate.

(7) "Buyer broker agreement" means a written agreement in which a prospective buyer employs a broker to locate real estate of the type and with terms and conditions as designated in the written agreement.

(8) "Buyer subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a buyer.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Dual agent" means a broker or salesperson who, pursuant to a written listing agreement or buyer broker agreement or as a buyer or seller subagent, acts as the agent of both the buyer and seller with written authorization, as provided in 37-51-314. An in-house buyer or seller agent designate may not be considered a dual agent.

(11) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(12) "In-house buyer agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a buyer for a designated transaction and who may not be considered to be acting for other than the buyer with respect to the designated transaction.

(13) "In-house seller agent designate" means a broker or salesperson employed by or associated as an independent contractor with a broker and designated by the broker as the exclusive agent for a seller for a designated transaction and who may not be considered to be acting for other than the seller with respect to the designated transaction.

(14) "Listing agreement" means a written agreement between a seller and broker for the sale of real estate, with the terms and conditions set out in the agreement.

(15) "Negotiations" means:

(a) efforts to act as an intermediary between parties to a real estate transaction;

(b) facilitating and participating in contract discussions;

(c) completing forms for offers, counteroffers, addendums, and other writings; and

(d) presenting offers and counteroffers.

(16) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(17) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(18) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(19) "Real estate transaction" means the sale, exchange, or lease or grant of an option for the sale, exchange, or lease of an interest in real estate and includes all communication, interposition, advisement, negotiation, and contract development and closing.

(20) "Salesperson" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(21) "Seller" means a person who has entered into a listing agreement to sell real estate and includes landlords who have an interest in or are a party to a lease or rental agreement.

(22) "Seller agent" means a broker or salesperson who, pursuant to a written listing agreement, acts as the agent of a seller and includes a seller subagent and an in-house seller agent designate.

(23) "Seller subagent" means a broker or salesperson who, pursuant to an offer of a subagency, acts as the agent of a seller.

(24) (a) "Statutory broker" means a broker or salesperson who assists one or more parties to a real estate transaction without acting as an agent or representative of any party to the real estate transaction.

(b) A broker or salesperson is presumed to be acting as a statutory broker unless the broker or salesperson has entered into a listing agreement with a seller or a buyer broker agreement with a buyer or has disclosed, as required in this chapter, a relationship other than that of a statutory broker.

(25) "Supervising broker" means a licensed broker with whom a licensed salesperson is associated, directly, indirectly, regularly, or occasionally, to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

(26) "Supervising broker endorsement" means an endorsement to a broker's license that is required of any licensed broker who supervises licensed salespersons performing real estate activity.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993; amd. Sec. 1, Ch. 565, L. 1995; amd. Sec. 144, Ch. 483, L. 2001; amd. Sec. 34, Ch. 492, L. 2001; amd. Sec. 25, Ch. 502, L. 2007.

Cross-References

Real property defined, 70-15-101.

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating a real estate transaction for others, except as specified in this section, must identify the person performing any of the acts as a real estate broker or a real estate salesperson. The provisions of this chapter do not:

(a) apply to any person who, as owner or lessor, performs any acts listed in subsection (1) with reference to property owned or leased by the person or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) include in any way the services rendered by any attorney at law in the performance of the attorney's duties;

(d) apply to any person appointed by a court for the purpose of evaluating or appraising an estate in a probate matter;

(e) include a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights, whether upon a royalty basis or otherwise;

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by Montana or an agency or subdivision of Montana or by the government of the United States or an agency of the United States; or

(i) apply to a person performing any act with respect to the following types of land transactions:

(i) right-of-way transfers for roads, utilities, and other public purposes, not including conservation easements or easements for recreational purposes;

(ii) condemnations; or

(iii) governmental or tribal permits.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 251, L. 1997.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

37-51-105. Sexual or violent offender registration information — responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

(1) the fact that the information may be maintained and by whom; and

(2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

History: En. Sec. 1, Ch. 99, L. 1999.

Part 2
Board of Realty Regulation

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1757.
Entries in official books and records prima facie evidence, 26-1-605.
Entry made by officer or Board prima facie evidence, 26-1-606.
Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).
Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).
Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-201. Presiding officer — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a presiding officer from among their number.

(2) The board shall adopt a seal of a design that it prescribes. Copies of records and papers kept by the department, certified by the presiding officer, and authenticated by the seal of the board must be received in evidence in courts with the same effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department:

(a) shall keep a record of proceedings, transactions, communications, and official acts of the board;

(b) is custodian of the records of the board; and

(c) shall perform other duties that the board, on the written request of two or more members of the board or at other times that the presiding officer, considers necessary.

(4) The presiding officer or an employee of the department hired to provide services to the board may not be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: **(1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1; amd. Sec. 1409, Ch. 56, L. 2009.**

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: **En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.**

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: **En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) Except as provided in 37-51-302 and subsection (3) of this section, the board may not require examinations of licensees.

(3) The board may require specified performance levels of a licensee with respect to the subject matter of a continuing education course required by the board when the licensee and the instructor of the course are not physically present in the same facility at the time the licensee receives the instruction.

(4) Education information obtained electronically by the board or stored in the board's databases may be used to determine compliance with education requirements established by the board. The use of the information may not be considered an audit for purposes of compliance with 37-1-131.

History: **En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985; amd. Sec. 104, Ch. 429, L. 1995; amd. Sec. 10, Ch. 375, L. 2003; amd. Sec. 101, Ch. 467, L. 2005; amd. Sec. 14, Ch. 100, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 100 inserted (4) regarding use of certain education information to determine compliance with board requirements. Amendment effective October 1, 2011.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.**

37-51-206. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.**

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: **En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: **En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

37-51-209. Executive secretary — hiring and duties. The department may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

History: **En. Sec. 1, Ch. 270, L. 1991; amd. Sec. 145, Ch. 483, L. 2001; amd. Sec. 35, Ch. 492, L. 2001.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duties of Director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt and enforce licensing and certification rules and to adopt rules on conduct, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or represent to the public as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesperson within this state without a license as a broker or salesperson or otherwise complying with this chapter.

(2) It is unlawful for a person to supervise licensed salespersons or to act in the capacity of a supervising broker unless the person has a valid and active Montana broker's license and a supervising broker endorsement.

(3) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 26, Ch. 502, L. 2007.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

37-51-302. Broker's or salesperson's license — qualifications of applicant — supervising broker endorsement. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesperson in a manner that safeguards the interests of the public.

(2) An applicant for a broker's license:

(a) must be at least 18 years of age;

(b) must have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) must have been actively engaged as a licensed real estate salesperson for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesperson ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesperson because of conditions existing in the area where the applicant resides, the board may waive this experience requirement;

(d) shall file an application for a license with the department; and

(e) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours, in addition to those required to secure a salesperson's license, in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesperson's license:

(i) must be at least 18 years of age;

(ii) must have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) shall file an application for a license with the department; and

(iv) shall furnish written evidence that the applicant has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) The application must be accompanied by the recommendation of a licensed broker with a supervising broker endorsement by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesperson a license and a pocket card in a form and size that the board prescribes.

(6) (a) An applicant for a supervising broker endorsement must meet the education and experience requirements established by the board by rule except that continuing education requirements for a supervising broker endorsement may not be in addition to the continuing education requirements for a licensed broker with respect to the total number of hours or credits required.

(b) The board may not assess a licensing fee for obtaining or renewing a supervising broker endorsement.

(c) The board may adopt rules allowing a salesperson to temporarily associate with a broker with a supervising broker endorsement other than the supervising broker listed on the salesperson's pocket card.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 36, Ch. 492, L. 2001; amd. Sec. 27, Ch. 502, L. 2007; amd. Sec. 1, Ch. 79, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 79 in (4)(b) inserted "with a supervising broker endorsement"; deleted former (6)(a)(i) and (6)(a)(ii) that read: "(i) any broker licensed prior to October 1, 2007, is entitled to a supervising broker endorsement provided that the broker indicates on the broker's license renewal form for the 2008 calendar year the broker's intention to obtain the endorsement;

(ii) a broker who obtains a supervising broker endorsement pursuant to subsection (6)(a)(i) is subject to the endorsement renewal requirements adopted by the board by rule in order to supervise one or more licensed salespersons"; inserted (6)(c) authorizing the board to adopt rules; and made minor changes in style. Amendment effective October 1, 2011.

37-51-303. Broker or salesperson examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is pending shall satisfactorily pass an examination.

(2) (a) The examination for a salesperson's license must include subject portions that the board determines by rule to be appropriate.

(b) If the applicant passes one subject portion of the examination, the applicant is not required to repeat that portion of the examination if the applicant passes the remaining portion within 12 months.

(3) The examination for a broker's license must be of a more exacting nature and scope and more stringent than the examination for a salesperson's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 7, Ch. 196, L. 2003; amd. Sec. 102, Ch. 467, L. 2005.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — delivery — display — pocket card. (1) A license must bear the seal of the board.

(2) The license of a real estate salesperson must be delivered or mailed to the salesperson's supervising broker and must be kept in the custody and control of the supervising broker.

(3) A broker shall display the broker's own license conspicuously in the broker's place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesperson, stating the period for which fees have been paid and, on a real estate salesperson's cards only, the name and address of the salesperson's supervising broker.

History: **En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 103, Ch. 467, L. 2005; amd. Sec. 2, Ch. 79, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 79 in (1) substituted "salesperson's supervising broker" for "real estate broker with whom the real estate salesperson is associated" and near end inserted "supervising"; in (4) at end substituted "salesperson's supervising broker" for "broker with whom the real estate salesperson is associated". Amendment effective October 1, 2011.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state or jurisdiction if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: **En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991; amd. Sec. 105, Ch. 429, L. 1995; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 170, L. 1999.**

Cross-References

Rules for determining residency, 1-1-215.

37-51-307. Repealed. Sec. 13, Ch. 375, L. 2003.

History: **En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.**

37-51-308. Broker's office — notice to department of change of address. (1) A licensed broker shall maintain a designated physical address where the original license of the broker and, if the broker is a supervising broker, the original license of each salesperson associated or under contract with the broker must be prominently displayed. The designated address of the broker must be indicated on the broker's license.

(2) In case of removal from the designated address, the broker shall notify the department before removal or within 10 days after removal, designating the new physical address and paying the required fee. After receipt of the information required under this subsection, the department shall issue a license for the new location for the unexpired period.

History: **En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 3, Ch. 79, L. 2011; amd. Sec. 15, Ch. 100, L. 2011.**

Compiler's Comments

2011 Amendments — Composite Section: Chapter 79 in (1) in second sentence near middle inserted "if the broker is a supervising broker"; in (2) after "paying the required" substituted current text for "fee, whereupon a license for the new location must be issued for the unexpired period"; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 100 in (1) in first sentence at beginning substituted "A licensed broker" for "A resident licensed broker", after "shall maintain a" substituted "designated physical address where" for "fixed office in this state", and at end deleted "in the office" and in second sentence substituted current language for "The address of the office and any branch office shall be designated on the broker's license"; in (2) substituted "broker" for "licensee" and "physical address" for "location of this office"; and made minor changes in style. Amendment effective October 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

37-51-309. Broker — salesperson — personal transactions of salesperson — notice to department of change of association. (1) A salesperson may not be associated with or under contract to more than one supervising broker or perform services for a broker with a supervising broker endorsement other than the one designated on the license issued to the salesperson except on a temporary basis as provided in 37-51-302.

(2) When a licensed salesperson desires to change association or contractual relationship from one supervising broker to another, the salesperson shall notify the department promptly in writing of these facts, pay the required fee, and return the salesperson's license, and a new license and pocket card must be issued. A salesperson may not directly or indirectly work for or with a supervising broker until the salesperson has been issued a license to work for or with that supervising broker. On termination of a salesperson's association or contractual relationship, the salesperson shall surrender the salesperson's license to the salesperson's supervising broker, who shall return it to the department for cancellation.

(3) Only one license may be issued to a salesperson to be in effect at one time.

(4) (a) The provisions of this chapter do not prohibit a salesperson from engaging in personal transactions, and the provisions of this chapter do not require a supervising broker to exercise any supervision or provide any training for a salesperson with respect to personal transactions of the salesperson.

(b) A supervising broker is not responsible or liable for the personal transactions of a salesperson if:

(i) the personal transaction does not involve the salesperson's supervising broker or real estate firm; and

(ii) prior to entering into a personal transaction, the salesperson discloses in writing to the other party that the transaction is a personal transaction with respect to the salesperson and that the transaction does not involve the salesperson's supervising broker or real estate firm.

(5) For the purposes of this part, "personal transaction" includes the following:

(a) the sale, purchase, or exchange of real property owned or acquired by the salesperson; and

(b) the leasing or renting of real property owned by the salesperson.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 294, L. 2001; amd. Sec. 37, Ch. 492, L. 2001; amd. Sec. 4, Ch. 79, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 79 in (1) substituted "supervising broker" for "licensed broker", near middle inserted "with a supervising broker endorsement", and at end inserted exception; in (2) in second sentence in two places and in third sentence, in (4)(a) near middle, in (4)(b) near beginning, and in (4)(b)(ii) near end inserted "supervising" before "broker"; in (2) in first sentence substituted "supervising broker" for "licensed broker"; in (4)(b) at end inserted "if"; inserted (4)(b)(i) regarding supervising brokers; and made minor changes in style. Amendment effective October 1, 2011.

37-51-310. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987; amd. Sec. 45, Ch. 492, L. 1997; amd. Sec. 2, Ch. 170, L. 1999; amd. Sec. 48, Ch. 271, L. 2003.

37-51-311. Fees — deposit of fees. The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985; amd. Sec. 106, Ch. 429, L. 1995.

Cross-References

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. (1) A license fee or license tax may not be imposed on a real estate broker or salesperson as a condition to the practice of the broker's or salesperson's profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

(2) This section does not prohibit a municipality or other political subdivision of the state from imposing a general business license fee or general business license tax on an establishment as a condition of conducting business in the municipality's or other political subdivision's jurisdiction.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4); amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1, Ch. 400, L. 2005.

37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

(a) act solely in the best interests of the seller, except that a seller agent, after written disclosure to the seller and with the seller's written consent, may represent multiple sellers of property or list properties for sale that may compete with the seller's property without breaching any obligation to the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent with a buyer or another seller;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the seller agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A seller agent is obligated to the buyer to:

(a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that are known to the seller agent, except that the seller agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a buyer agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A buyer agent is obligated to the buyer to:

(a) act solely in the best interests of the buyer, except that a buyer agent, after written disclosure to the buyer and with the buyer's written consent, may represent multiple buyers interested in buying the same property or properties similar to the property in which the buyer is interested or show properties in which the buyer is interested to other prospective buyers without breaching any obligation to the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the buyer agent with another buyer or a seller;

(d) safeguard the buyer's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A buyer agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the buyer agent and that concern the ability of the buyer to perform on any purchase offer;

(b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a seller and a seller agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section except that a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations.

(8) A dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(a) the fact that the buyer is willing to pay more than the offered purchase price;

(b) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(c) factors motivating either party to buy or sell; and

(d) any information that a party indicates in writing to the dual agent is to be kept confidential.

(9) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson is only required to meet the requirements of part 6 of this chapter, other than those requirements for the licensing of property managers, and the rules adopted by the board to govern licensed property managers.

(10) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(11) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure of any adverse material facts that concern the principal's property or the ability of the principal to perform on any purchase offer;

(iii) disclosure required by law or to prevent the commission of a crime;

(iv) the information being disclosed by someone other than the broker or salesperson; and

(v) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(12) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.

History: En. Sec. 3, Ch. 565, L. 1995; amd. Sec. 3, Ch. 170, L. 1999; amd. Sec. 1, Ch. 389, L. 2005; amd. Sec. 1, Ch. 118, L. 2007.

37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing agreement is executed.

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent at the time negotiations commence.

(3) A buyer agent shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) A broker or salesperson, while managing properties for owners, shall disclose to all customers and clients the contractual relationship of the broker or salesperson.

(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship.

(10) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

(11) A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction.

History: En. Sec. 4, Ch. 565, L. 1995; amd. Sec. 4, Ch. 170, L. 1999; amd. Sec. 2, Ch. 389, L. 2005.

37-51-315. Vicarious liability. (1) A party to a real estate transaction is not liable for a misrepresentation made by the party's agent or subagent unless:

(a) the party has actual knowledge of the misrepresentation; or

(b) the agent or subagent is repeating a misrepresentation made by the party.

(2) A broker is not liable for a misrepresentation made by the broker's subagent unless:

(a) the broker has actual knowledge of the misrepresentation;

(b) the subagent making the misrepresentation is an employee of the broker and not an independent contractor; or

(c) a broker or subagent is repeating a misrepresentation made by the broker.

(3) An agent is not liable for a misrepresentation made by the principal unless the agent has actual knowledge of the misrepresentation.

History: En. Sec. 5, Ch. 565, L. 1995; amd. Sec. 38, Ch. 492, L. 2001.

37-51-316 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that capacity by a person, except if the money received by the salesperson is part of the salesperson's personal transaction;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson;

(t) conviction of a felony;

(u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing property management while managing properties for owners; or

(v) failing to disclose to all customers and clients, including owners and tenants, the broker's or salesperson's contractual relationship while managing properties for owners.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993; amd. Sec. 2, Ch. 565, L. 1995; amd. Sec. 5, Ch. 170, L. 1999; amd. Sec. 2, Ch. 294, L. 2001; amd. Sec. 3, Ch. 389, L. 2005.

37-51-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties — criminal — civil. (1) An individual acting as a broker or salesperson without a license or while the individual's license is suspended or revoked or a person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction by a district court of this state shall be punished by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case a person in a civil action is found guilty of having received any money or the equivalent of money as a fee, commission, compensation, or profit by or in consequence of a

violation of any provision of this chapter, the person shall in addition be liable to a penalty of not less than the amount of the sum of money received and not more than three times the sum received, as may be determined by the court. The monetary penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: **En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 1410, Ch. 56, L. 2009.**

37-51-324. Penalty for failure to comply with trust account requirements. (1) An employee of the department may issue a citation to a broker or property manager responsible for maintenance of a trust account for failure to comply with trust account maintenance requirements as provided by rule under 37-1-319(4).

(2) The citation must include:

(a) the time and date on which the citation is issued;

(b) the name, title, mailing address, and signature of the person issuing the citation;

(c) reference to the statute or rule violated;

(d) the name, title, and mailing address of the person to whom the citation is being sent, along with information explaining the procedure for the person receiving the citation to follow to pay the fine or dispute the violation; and

(e) the amount of the applicable fine.

(3) The applicable civil fine for failure to comply with trust account maintenance requirements is $50 for each cited violation.

(4) The person who issues the citation is authorized to collect the fine and deposit the proceeds in the state special revenue account to the credit of the board.

(5) The person who is issued a citation may pay the fine or file a written dispute of the violation with the board within 5 business days of the date of issuance.

(6) A person who refuses to sign and accept a citation but who does not file a written dispute of the violation is demonstrating unprofessional conduct.

History: **En. Sec. 24, Ch. 502, L. 2007.**

Part 4
Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesperson. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesperson within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesperson or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: **En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941; amd. Sec. 6, Ch. 565, L. 1995.**

Part 5
Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: **En. Sec. 3, Ch. 688, L. 1985.**

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against a person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction for which a license is required under this chapter, the person may after executing on the final judgment file an application, in accordance with 37-51-504 and this section, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) An application or order for payment from the account may not be made for:

(a) a judgment that has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985; amd. Sec. 1411, Ch. 56, L. 2009.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account shall show in the application:

(1) that the person is not the spouse of the judgment debtor or the personal representative of the spouse;

(2) that the person has obtained a judgment that satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that the person has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that the person has diligently pursued the remedies of execution and proceedings in aid of execution against any other person against whom the person has a judgment as a result of the transaction for which the person seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985; amd. Sec. 1412, Ch. 56, L. 2009.

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: En. Sec. 7, Ch. 688, L. 1985.

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: En. Sec. 8, Ch. 688, L. 1985.

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: En. Sec. 9, Ch. 688, L. 1985.

37-51-508. Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: En. Sec. 10, Ch. 688, L. 1985.

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: En. Sec. 11, Ch. 688, L. 1985.

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: En. Sec. 12, Ch. 688, L. 1985.

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount paid and the judgment creditor is considered to have assigned to the board all of the creditor's right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: En. Sec. 13, Ch. 688, L. 1985; amd. Sec. 1413, Ch. 56, L. 2009.

37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: En. Sec. 14, Ch. 688, L. 1985.

Part 6
Licensure of Property Managers

Part Cross-References

Landlord-tenant laws, Title 70, ch. 24 through 26.

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: **En. Sec. 2, Ch. 142, L. 1993.**

37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesperson on active status and acting under a supervising broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and without holding a separate property manager's license.

History: **En. Sec. 3, Ch. 142, L. 1993; amd. Sec. 6, Ch. 565, L. 1995; amd. Sec. 4, Ch. 389, L. 2005; amd. Sec. 5, Ch. 79, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 79 in (2) substituted "a supervising broker" for "the supervision of a real estate broker"; and made minor changes in style. Amendment effective October 1, 2011.

37-51-603. Qualification of property manager applicants — examination — form of licenses. (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(4) The license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(5) The department shall prepare and deliver to the licensee a pocket card in a form and at times prescribed by the board.

History: **En. Sec. 4, Ch. 142, L. 1993; amd. Sec. 46, Ch. 492, L. 1997; amd. Sec. 104, Ch. 467, L. 2005.**

37-51-604. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 5, Ch. 142, L. 1993.**

37-51-605. Property manager's office — notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

History: **En. Sec. 6, Ch. 142, L. 1993; amd. Sec. 16, Ch. 100, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 100 deleted former second sentence that read: "The office manager must be designated on the license." Amendment effective October 1, 2011.

37-51-606. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 7, Ch. 142, L. 1993.**

37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: **En. Sec. 8, Ch. 142, L. 1993.**

37-51-608. Penalties — criminal — civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: **En. Sec. 9, Ch. 142, L. 1993.**

CHAPTER 52
TITLE ABSTRACTERS
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Board of Abstracters
(Repealed)

Part 3 — Licensing
(Repealed)

Part 4 — Miscellaneous Provisions
(Repealed)

Part 1
General
(Repealed)

37-52-101. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

Part 2
Board of Abstracters
(Repealed)

37-52-201. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

Part 3
Licensing
(Repealed)

37-52-301. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

Part 4
Miscellaneous Provisions
(Repealed)

37-52-401. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTER 53
TIMESHARE SALES

Part 1 — General

37-53-101. Short title.
37-53-102. Definitions.
37-53-103. Repealed.
37-53-104. Rulemaking authority.

Part 2 — Registration of Timeshare Offerings

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Part 4 — Promotional Offers
(Repealed)

Part 5 — Enforcement

37-53-501. Repealed.
37-53-502. Repealed.
37-53-503. Repealed.
37-53-504. Repealed.
37-53-505. Repealed.
37-53-506. Criminal proceedings.

Chapter Cross-References
Unit Ownership Act — condominiums, Title 70, ch. 23.

Part 1
General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".
History: En. Sec. 1, Ch. 444, L. 1987.

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(2) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(3) "Board" means the board of realty regulation provided for in 2-15-1757.

(4) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling the person's own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor, agent, or assignee of a person referred to in subsection (4)(a) or (4)(b).

(5) (a) "Expenses" means expenditures, fees, charges, or liabilities, including any allocations to reserves:

(i) incurred, with respect to timeshare intervals or units, by or on behalf of all timeshare owners in one timeshare property; and

(ii) imposed on the timeshare intervals or units by the entity governing the project of which the timeshare intervals or units are a part.

(b) The term does not include purchase money payable for timeshare intervals or units.

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare interest. An offer is made in this state if the offer originates in this state or is advertised in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Project" means the real property or real estate, which must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(10) "Promoter" means any person who induces, solicits, or encourages another person to review or acquire a timeshare interval.

(11) "Public offering statement" means the written statement required by 37-53-303.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(16) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating the use and occupancy rights between similar users.

(17) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(18) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated with a timeshare development to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(19) "Timeshare unit" or "unit" means the real property or portion of real property in which the timeshare interval exists or will exist, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: En. Sec. 2, Ch. 444, L. 1987; amd. Sec. 1414, Ch. 56, L. 2009; amd. Sec. 1, Ch. 317, L. 2009.

37-53-103. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 29, Ch. 444, L. 1987; amd. Sec. 49, Ch. 271, L. 2003.

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) registration information that must be supplied;
(2) documents acceptable in lieu of registration documents under 37-53-204;
(3) qualifications for applicants as provided in 37-53-301;
(4) continuing education requirements for renewal of a timeshare salesperson's license;
(5) additional information included in a public offering statement; and
(6) fees established pursuant to 37-1-134.

History: En. Sec. 30, Ch. 444, L. 1987; amd. Sec. 105, Ch. 467, L. 2005; amd. Sec. 2, Ch. 317, L. 2009.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2
Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: En. Sec. 3, Ch. 444, L. 1987.

37-53-202. Application for registration. An application for registration of a timeshare offering must be signed by the developer and accompanied by the registration fee. A timeshare offering may not be registered unless the developer has filed a complete application as determined by the board or the board's designee. Except as provided in 37-53-204, the application must contain:

(1) financial statements prepared in accordance with generally accepted accounting principles that fully and fairly disclose the current financial condition of the developer;

(2) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(3) copies of all timeshare instruments;
(4) a copy of the public offering statement provided for in 37-53-303;
(5) an irrevocable consent to service of process signed by the developer; and
(6) any other information that the board may require by rule.

History: En. Sec. 4, Ch. 444, L. 1987; amd. Sec. 1, Ch. 12, L. 1993; amd. Sec. 3, Ch. 317, L. 2009.

37-53-203. Notice of changes in timeshare offering. If a material change in the timeshare offering occurs, the developer is required to file an amendment to the documents filed under 37-53-202, along with the prescribed fee.

History: En. Sec. 5, Ch. 444, L. 1987; amd. Sec. 50, Ch. 271, L. 2003; amd. Sec. 4, Ch. 317, L. 2009.

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept a public offering statement filed with an agency of the United States or any other state.

(2) The board may prescribe by rule those documents acceptable under subsection (1).

History: En. Sec. 6, Ch. 444, L. 1987; amd. Sec. 5, Ch. 317, L. 2009.

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare interest;
(3) a sale under court order;
(4) a sale by any government or a governmental agency;
(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure;

(6) a sale of a timeshare offering already registered in Montana or a sale of all timeshare units or timeshare intervals in the timeshare offering to any one purchaser; or

(7) a transfer of a timeshare interest by a timeshare owner other than the developer or the developer's agent unless the transfer is made for the purpose of avoiding the provisions of this chapter.

History: En. Sec. 7, Ch. 444, L. 1987; amd. Sec. 6, Ch. 317, L. 2009.

37-53-206 through 37-53-210 reserved.

37-53-211. Repealed. Sec. 13, Ch. 317, L. 2009.
History: **En. Sec. 8, Ch. 444, L. 1987; amd. Sec. 107, Ch. 429, L. 1995.**

37-53-212. Repealed. Sec. 13, Ch. 317, L. 2009.
History: **En. Sec. 9, Ch. 444, L. 1987.**

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.
History: **En. Sec. 10, Ch. 444, L. 1987.**

37-53-214. Repealed. Sec. 13, Ch. 317, L. 2009.
History: **En. Sec. 11, Ch. 444, L. 1987.**

Part 3
Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare salespersons — licensee duties. (1) A person offering timeshare intervals in a project located in Montana must be licensed as a timeshare salesperson and affiliated with at least one registered timeshare project unless the offering is exempt under 37-53-205.

(2) Licensure may be obtained upon:

(a) completion of an application;

(b) meeting the qualifications listed in subsection (3);

(c) demonstration to the board that the applicant is an individual of good repute and competent to transact the business of a timeshare salesperson in a manner that safeguards the interests of the public;

(d) payment of fees set by the board by rule; and

(e) successful completion of a course of education related to the timeshare industry that has been approved by the board.

(3) An applicant for a timeshare salesperson license must:

(a) be at least 18 years of age; and

(b) have graduated from an accredited high school or completed equivalent education as determined by the board.

(4) The board shall issue a certificate of completion to an applicant who successfully completes the course of education provided for in subsection (2)(e) and may issue a license to an applicant meeting the qualifications and licensure provisions.

(5) A licensed timeshare salesperson shall notify the department of a change of affiliation within 10 days of the change, designate the new license affiliation, and pay all required fees.

(6) If a timeshare salesperson is no longer affiliated with a timeshare project, the timeshare salesperson shall notify the board that the license is inactive and pay the fees required by rule. A timeshare salesperson may reactivate an inactive license by filling out an application, listing a new affiliation, and paying all required fees.
History: **En. Sec. 12, Ch. 444, L. 1987; amd. Sec. 1415, Ch. 56, L. 2009; amd. Sec. 7, Ch. 317, L. 2009.**

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order deny, suspend, or revoke a timeshare salesperson's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure as a timeshare salesperson that is incomplete or contains any statement that is false or misleading;

(2) has violated or failed to comply with any provision of Title 37, chapters 1, 51, and 53, or any rules adopted by the board if the violation or the failure to comply related to the timeshare business;

(3) has been convicted of a felony unless the provisions of Title 37, chapter 1, part 2, are met;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices related to public health, welfare, and safety as those practices apply to the timeshare business; or

(6) has not complied with any condition imposed by the board.

History: En. Sec. 13, Ch. 444, L. 1987; amd. Sec. 108, Ch. 429, L. 1995; amd. Sec. 8, Ch. 317, L. 2009.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-303. Public offering statement. Unless exempt from registration, a person who offers or sells a timeshare interval shall provide the prospective purchaser with a written public offering statement before the prospective purchaser signs an agreement for the purchase of a timeshare. The public offering statement must include and fully and accurately disclose:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare units and associated real property, including but not limited to the developer's schedule of commencement and completion of all buildings, units, and amenities or, if completed, a statement that they have been completed;

(4) a list of all timeshare units and timeshare intervals offered by the developer or promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshare intervals;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshare units and timeshare intervals that may be created or a statement that there is not a maximum;

(5) a description of the types of financing offered by the promoter or developer;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument or instruments;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge and the manner, if any, whereby the developer may change the managing entity;

(9) a copy of the current budget and projected budget for the timeshare offering. The budget must include:

(a) a statement of the amount included in the budget as a reserve for repairs, maintenance, and replacement of the timeshare units;

(b) a detailed list of projected common expenses, liabilities, and expenditures for the timeshare units and timeshare intervals; and

(c) a statement of any services or expenses not reflected in the budget that the developer provides or pays.

(10) a statement in boldface type on the cover page of the public offering statement that, within 7 days after receipt of the public offering statement or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare interval and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) a prepared legal document that once executed will effectively cancel the agreement between the purchaser and the developer;

(12) any restrictions on transfers of a timeshare interval or portion of the timeshare interval;

(13) a description of any insurance coverage provided for the benefit of timeshare interval owners by the managing entity or the timeshare interval owners' association;

(14) a full and accurate disclosure of whether the timeshare interval owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare interval owners of other timeshare units, or both, and a complete description of the program; and

(15) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial information required by 37-53-202.

History: En. Sec. 14, Ch. 444, L. 1987; amd. Sec. 9, Ch. 317, L. 2009.

37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare interval shall provide a prospective purchaser with a copy of the public offering statement described in 37-53-303 before the execution of any agreement for the purchase of a timeshare interval. Within 7 days following receipt of a public offering statement or signing of a timeshare purchase agreement, whichever is later, a purchaser may cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the developer or developer's agent either by certified mail or personal delivery. If the purchaser does not receive the public offering statement, the agreement is voidable by the purchaser until the purchaser receives the public offering statement and for 7 days after receipt. The provisions of this section may not be waived.

History: En. Sec. 15, Ch. 444, L. 1987; amd. Sec. 10, Ch. 317, L. 2009.

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer the developer's interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: En. Sec. 16, Ch. 444, L. 1987; amd. Sec. 1416, Ch. 56, L. 2009.

37-53-306. Good faith requirement — prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: En. Sec. 17, Ch. 444, L. 1987.

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: En. Sec. 18, Ch. 444, L. 1987; amd. Sec. 11, Ch. 317, L. 2009.

Cross-References

Fraud defined, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare interval in violation of this chapter is liable to the person buying the timeshare interval, who may sue to recover the consideration paid for the timeshare interval, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare interval or for damages if the person no longer owns the timeshare interval.

History: En. Sec. 19, Ch. 444, L. 1987; amd. Sec. 12, Ch. 317, L. 2009.

Cross-References

Legal interest, 31-1-106.

Part 4
Promotional Offers
(Repealed)

37-53-401. Repealed. Sec. 13, Ch. 317, L. 2009.

History: En. Sec. 20, Ch. 444, L. 1987.

37-53-402. Repealed. Sec. 13, Ch. 317, L. 2009.

History: En. Sec. 21, Ch. 444, L. 1987.

37-53-403. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 22, Ch. 444, L. 1987.

Part 5
Enforcement

37-53-501. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 23, Ch. 444, L. 1987.

37-53-502. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 24, Ch. 444, L. 1987.

37-53-503. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 25, Ch. 444, L. 1987.

37-53-504. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 26, Ch. 444, L. 1987.

37-53-505. Repealed. Sec. 13, Ch. 317, L. 2009.
History: En. Sec. 27, Ch. 444, L. 1987.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.
History: En. Sec. 28, Ch. 444, L. 1987.

CHAPTER 54
REAL ESTATE APPRAISERS

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Part 5 — Appraisal Management Companies

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Chapter Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Appraisal — property taxation, Title 15, ch. 7.

Part 1
General

37-54-101. Short title. This chapter may be cited as the "Real Estate Appraiser Licensing and Certification Act".

History: En. Sec. 1, Ch. 409, L. 1991.

37-54-102. Definitions. Terms commonly used in appraisal practice and as used in this chapter must be defined according to the Uniform Standards of Professional Appraisal Practice, as issued by the appraisal foundation. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" means the practice of developing an opinion of the value of real property in conformance with the Uniform Standards of Professional Appraisal Practice as developed by the appraisal foundation.

(2) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the licensure and certification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(3) "Appraisal management company" means, in connection with valuation of properties collateralizing mortgage loans or mortgages incorporated into a securitization, an external third party, authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in this state or 25 or more nationally within a given year.

(4) "Appraisal management services" means the direct or indirect performance of any of the following functions on behalf of a lender, financial institution, client, or other person in

conjunction with a consumer credit transaction that is secured by a consumer's principal dwelling:

(a) administering an appraiser panel;

(b) recruiting, retaining, or selecting appraisers to be part of an appraisal panel;

(c) qualifying and verifying licensing or certification, negotiating fees, and verifying service level expectations with appraisers who are part of an appraiser panel;

(d) contracting with appraisers from the appraiser panel to perform appraisal assignments;

(e) receiving an order for an appraisal assignment from one person and delivering the order for the appraisal assignment to an appraiser who is part of an appraiser panel for completion;

(f) managing the process of having an appraisal assignment performed, including performing administrative duties such as receiving appraisal assignment orders and reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed;

(g) tracking and determining the status of orders for appraisal assignments;

(h) conducting quality control examinations of a completed appraisal assignment prior to the delivery of the appraisal report to a client who ordered the appraisal assignment; and

(i) providing a completed appraisal report performed by an appraiser to one or more clients.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include a quality control examination.

(6) "Appraiser" means an individual who holds a license or certification to complete an appraisal assignment in the state where the real property that is the subject of the appraisal assignment is located.

(7) "Appraiser panel" means a network of licensed or certified appraisers who are independent contractors with respect to an appraisal management company and who have:

(a) responded to an invitation, request, or solicitation from an appraisal management company to:

(i) perform an appraisal assignment for a client that has ordered an appraisal assignment through the appraisal management company; or

(ii) perform appraisal assignments for the appraisal management company directly on a periodic basis as requested and assigned by the appraisal management company; and

(b) been selected and approved by an appraisal management company to perform appraisal assignments for any client of the company that has ordered an appraisal assignment through the company or to perform appraisal assignments for the appraisal management company directly on a periodic basis as assigned by the appraisal management company.

(8) "Board" means the board of real estate appraisers provided for in 2-15-1758.

(9) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(10) "Controlling person" means:

(a) an owner, officer, or director of a corporation, partnership, or other business entity that offers appraisal management services in this state;

(b) an individual employed, appointed, or authorized by an appraisal management company to enter into a contractual relationship with other persons for the performance of appraisal management services and to enter into agreements with appraisers for the performance of appraisal assignments; or

(c) an individual who possesses directly or indirectly the power to direct or cause the direction of the management or policies of an appraisal management company.

(11) "Department" means the department of labor and industry provided for in 2-15-1701.

(12) "Licensed real estate appraisal trainee" means a person authorized only to assist a certified real estate appraiser in the performance of an appraisal assignment.

(13) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(14) "Person" means an individual, firm, partnership, association, corporation, or other business entity.

(15) "Quality control examination" means an examination of an appraisal report for completeness, including grammatical, mathematical, and typographical errors.

History: **En. Sec. 2, Ch. 409, L. 1991; amd. Sec. 27, Ch. 481, L. 1997; amd. Sec. 146, Ch. 483, L. 2001; amd. Sec. 1, Ch. 341, L. 2003; amd. Sec. 1, Ch. 270, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 270 in first sentence following "Standards of" inserted "Professional"; inserted definitions of appraisal, appraisal management company, appraisal management services, appraisal review, appraiser, appraiser panel, controlling person, person, and quality control examination; and made minor changes in style. Amendment effective October 1, 2011.

37-54-103 and 37-54-104 reserved.

37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of processing an application for licensure and certification and renewal of a license or certificate;

(3) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(4) prescribe the examinations for licensure or certification and determine the acceptable level of performance on examinations;

(5) receive and review applications for licensure and certification and issue licenses and certificates;

(6) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(7) retain all applications and other records submitted to it;

(8) adopt by rule standards of professional appraisal practice in this state;

(9) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers or registered appraisal management companies; and

(10) perform other duties necessary to implement this chapter.

History: **En. Sec. 4, Ch. 409, L. 1991; amd. Sec. 109, Ch. 429, L. 1995; amd. Sec. 28, Ch. 481, L. 1997; amd. Sec. 8, Ch. 196, L. 2003; amd. Sec. 2, Ch. 270, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 270 in (9) following "appraisers" inserted "or registered appraisal management companies". Amendment effective October 1, 2011.

37-54-106 through 37-54-109 reserved.

37-54-110. Repealed. Sec. 13, Ch. 375, L. 2003.

History: **En. Sec. 26, Ch. 409, L. 1991.**

37-54-111. Certificate of good standing. The board may issue a certificate of good standing to any licensed or certified real estate appraiser who holds a current valid license or certificate in this state.

History: **En. Sec. 27, Ch. 409, L. 1991.**

37-54-112. Deposit of fees. Fees collected by the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6), and may be used to pay the compensation of board members and other expenses necessary to administer this chapter.

History: **En. Sec. 22, Ch. 409, L. 1991.**

Part 2
Licensure

37-54-201. Real estate appraiser license — scope and display of license. (1) Upon proof that an applicant meets the qualifications set out in 37-54-202, the board shall issue to the applicant a real estate appraiser license.

(2) The term "licensed real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) This chapter does not preclude a person who is not a licensed or certified real estate appraiser from appraising real property for transactions not related to a federal agency or project for compensation if the person does not purport to be a licensed or certified real estate appraiser. A person who purports that the person or the person's company is licensed under this section or certified under 37-54-302 and 37-54-303 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which the person is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the federal financial institutions examination council agencies.

(5) A licensed or certified real estate appraiser is subject to restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in the appraiser's principal place of business.

History: En. Sec. 5, Ch. 409, L. 1991; amd. Sec. 29, Ch. 481, L. 1997; amd. Sec. 9, Ch. 196, L. 2003.

37-54-202. Qualifications for licensure. (1) To qualify for a real estate appraiser license, an applicant:

(a) must be of good moral character;

(b) shall successfully complete a course of study prescribed by the board;

(c) must have the type and amount of experience in real estate appraisal prescribed by the board;

(d) shall successfully complete an examination prescribed by the board; and

(e) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

(2) To qualify for licensure as a real estate appraisal trainee, an applicant:

(a) must be of good moral character;

(b) shall successfully complete a course of study prescribed by the board;

(c) shall provide a written acknowledgment from the certified real estate appraiser that the applicant will be assisting; and

(d) is not required to take an examination.

History: En. Sec. 6, Ch. 409, L. 1991; amd. Sec. 30, Ch. 481, L. 1997; amd. Sec. 2, Ch. 341, L. 2003.

37-54-203. Repealed. Sec. 46, Ch. 481, L. 1997.

History: En. Sec. 7, Ch. 409, L. 1991.

37-54-204 through 37-54-209 reserved.

37-54-210. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 8, Ch. 409, L. 1991; amd. Sec. 1, Ch. 81, L. 1993; amd. Sec. 110, Ch. 429, L. 1995; amd. Sec. 31, Ch. 481, L. 1997.

37-54-211. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 9, Ch. 409, L. 1991; amd. Sec. 2, Ch. 81, L. 1993; amd. Sec. 111, Ch. 429, L. 1995; amd. Sec. 32, Ch. 481, L. 1997; amd. Sec. 51, Ch. 271, L. 2003.

37-54-212. Temporary registration of certification and licensure of out-of-state appraisers. (1) The board shall recognize on a temporary basis the certificate or license of an appraiser issued by another state if:

(a) the appraiser's business in this state is of a temporary nature; and

(b) the appraiser registers with the board.

(2) The out-of-state appraiser shall submit an application for temporary registration on a form prescribed by the board and pay the required fee. In addition, a letter of good standing or license history indicating that the applicant is currently in good standing must be submitted directly to the board's office from the applicant's state of certification or licensure, or the board may obtain a national registry appraiser license history report.

(3) The temporary registration is valid only for a single appraisal assignment within this state. The temporary registration may be awarded for a 6-month period and renewed one time

within the 12-month period following the original date on which the temporary registration was issued.

(4) A single appraisal assignment may include one or more properties under a single contract with a single client.

History: En. Sec. 39, Ch. 492, L. 2001.

Part 3
Certification

37-54-301. Certification — use of term — standards of practice. (1) A person may not represent to the public that the person is a certified real estate appraiser unless the person is certified under this chapter.

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

(4) Whenever an appraisal or appraiser report is identified by the certified real estate appraiser as "certified", the appraiser shall indicate in writing the class of certification the appraiser holds.

History: En. Sec. 17, Ch. 409, L. 1991; amd. Sec. 33, Ch. 481, L. 1997.

37-54-302. Certification process — fees. (1) An application for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge to comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403 and affirm that the applicant understands the types of misconduct for which disciplinary action may be initiated under 37-1-308.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that the applicant has the education required for the class or classes of certification for which application is made; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

History: En. Sec. 18, Ch. 409, L. 1991; amd. Sec. 112, Ch. 429, L. 1995; amd. Sec. 10, Ch. 196, L. 2003.

37-54-303. Classes of certification — education and experience requirements. (1) A real estate appraiser may be certified in one or both of the following classes:

(a) general real estate, which relates to the appraisal of all types of real property;

(b) residential real estate, which relates to the appraisal of expensive or complex 1 to 4 family homes.

(2) The board shall adopt rules pertaining to real estate appraisal education and experience that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

History: En. Sec. 19, Ch. 409, L. 1991; amd. Sec. 3, Ch. 81, L. 1993.

37-54-304. Repealed. Sec. 28, Ch. 196, L. 2003.

History: En. Sec. 20, Ch. 409, L. 1991; amd. Sec. 4, Ch. 81, L. 1993; amd. Sec. 34, Ch. 481, L. 1997.

37-54-305. Issuance and display of certificate. (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 and 37-54-303.

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in the appraiser's principal place of business.

(4) A certified real estate appraiser shall designate the class for which the appraiser is certified and place the certificate number on each appraisal report, contract, or other instrument that the appraiser uses in conducting real estate appraisal activities.

History: En. Sec. 21, Ch. 409, L. 1991; amd. Sec. 35, Ch. 481, L. 1997; amd. Sec. 11, Ch. 196, L. 2003.

37-54-306 through 37-54-309 reserved.

37-54-310. Renewal of certificate. (1) A certificate issued under 37-54-305 expires on the date set by department rule.

(2) A certificate may be renewed upon payment of a renewal fee and by meeting all requirements for renewal.

(3) An applicant for renewal shall state the class of certification previously held and presently sought.

History: En. Sec. 24, Ch. 409, L. 1991; amd. Sec. 5, Ch. 81, L. 1993; amd. Sec. 113, Ch. 429, L. 1995.

37-54-311. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 25, Ch. 409, L. 1991; amd. Sec. 6, Ch. 81, L. 1993; amd. Sec. 114, Ch. 429, L. 1995; amd. Sec. 36, Ch. 481, L. 1997; amd. Sec. 52, Ch. 271, L. 2003.

Part 4
Regulation of Practice

37-54-401. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 409, L. 1991.

37-54-402. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 14, Ch. 409, L. 1991.

37-54-403. Standards of professional appraisal practice. (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation. A licensed or certified real estate appraiser shall comply with these standards regardless of whether the appraisal is a federally related transaction or is capable of being performed by an unlicensed person under 37-54-201(3).

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers, the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary to determine whether the modified or supplemented standards must be observed in this state. If following the hearing the board determines that the modified or supplemented standards are appropriate, the board shall adopt the standards by rule.

History: En. Sec. 13, Ch. 409, L. 1991; amd. Sec. 7, Ch. 81, L. 1993; amd. Sec. 22, Ch. 230, L. 1999.

37-54-404 and 37-54-405 reserved.

37-54-406. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 28, Ch. 409, L. 1991.

37-54-407 through 37-54-410 reserved.

37-54-411. Classification of services. (1) A client or employer may retain or employ a licensed or certified real estate appraiser to:

(a) act as a disinterested third party in rendering an unbiased analysis, opinion, conclusion, or estimate of value; or

(b) provide specialized appraisal services to facilitate the client's or employer's objectives.

(2) In either instance described in subsection (1), the appraisal and appraisal report must comply with the provisions of this chapter.

History: En. Sec. 16, Ch. 409, L. 1991.

37-54-412. Collection of appraisal fees. A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless the person alleges and proves that the person held a valid license or certificate at all times during the performance of those services.

History: En. Sec. 12, Ch. 409, L. 1991; amd. Sec. 1418, Ch. 56, L. 2009.

37-54-413 and 37-54-414 reserved.

37-54-415. Place of business. (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes the principal place of business, the appraiser shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if the licensee maintains a principal place of business in the licensee's domicile state.

History: En. Sec. 11, Ch. 409, L. 1991; amd. Sec. 1419, Ch. 56, L. 2009.

37-54-416. Retention of records. (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging the person's services as an appraiser;

(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and

(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal report is involved in litigation, the appraiser shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report the appraiser is required to maintain under the provisions of this section.

History: En. Sec. 15, Ch. 409, L. 1991; amd. Sec. 1420, Ch. 56, L. 2009.

37-54-417. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 23, Ch. 409, L. 1991.

Part 5

Appraisal Management Companies

Part Compiler's Comments

Effective Date: This part is effective October 1, 2011.

37-54-501. Appraisal management company registration. (1) (a) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(b) An applicant for registration as an appraisal management company in this state shall submit an application to the board on forms prescribed by the department.

(c) If a registration process is not in effect on October 1, 2011, an appraisal management company already conducting business in this state may continue to conduct business in accordance with this chapter until 120 days after a registration process becomes available. Upon expiration of the 120-day period, the appraisal management company must be registered as required by this chapter in order to continue to provide or offer to provide appraisal management services in this state.

(2) An application for the registration required by subsection (1) must include the following information:

(a) the name of the person seeking registration and the fictitious name or names, if any, under which the person does business in any state;

(b) the business address of the person seeking registration;

(c) the phone contact information of the person seeking registration;

(d) if the appraisal management company is not a corporation domiciled in this state, the name and contact information for the company's designated contact for service of process in this state;

(e) the name, address, and contact information for one controlling person within the appraisal management company;

(f) a certification that the person has a system and process in place to verify that an individual holds a license in good standing in this state pursuant to 37-54-202 if a license or certification is required to perform appraisal assignments;

(g) a certification that the person requires appraisers completing appraisal assignments at its request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(h) a certification that the person has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(i) a certification that the person has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the Truth in Lending Act of 1968, 15 U.S.C. 1601, et seq., including the requirement that the fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of a consumer;

(j) a certification that the person maintains a detailed record of each service request that it receives and the appraiser that performs the appraisal service for the appraisal management company;

(k) an irrevocable uniform consent to service of process; and

(l) any other information required by the board that is reasonably necessary to implement this chapter.

(3) An application for renewal of a registration must include information substantially similar to that required for the initial registration in subsection (2), as determined by the board.

(4) Renewals of registered appraisal management companies must be in accordance with 37-1-141. The department shall provide notice to an appraisal management company prior to the renewal date.

History: En. Sec. 3, Ch. 270, L. 2011.

37-54-502. Registration exemptions. (1) The provisions of this chapter do not apply to a person who exclusively employs appraisers on an employer-employee basis for the performance of an appraisal assignment.

(2) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is regulated by a federal financial institution regulatory agency is not required to register with the board but shall comply with all provisions of this chapter, as long as the provisions of this chapter do not conflict with federal law related to the operation of an appraisal management company in this state.

History: En. Sec. 4, Ch. 270, L. 2011.

37-54-503. Owner requirements. (1) An appraisal management company applying for registration in this state may not be more than 10% owned by:

(a) a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated; or

(b) another entity that is more than 10% owned by a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated.

(2) Each person who owns more than 10% of an appraisal management company in this state:

(a) must be of good moral character, as determined by the board; and

(b) shall submit to a background examination as determined by the board.

(3) Each appraisal management company applying for registration in this state shall certify to the board that it has reviewed each entity that directly owns more than 10% of the

appraisal management company and that no entity that directly owns more than 10% of the appraisal management company is more than 10% directly owned by any person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state.

History: En. Sec. 5, Ch. 270, L. 2011.

37-54-504. Contact individual. (1) Each appraisal management company shall designate one individual as the main contact for communication between the board and the appraisal management company. An appraisal management company may designate a controlling person of the company as the contact individual.

(2) The contact individual designated pursuant to subsection (1):

(a) must hold a license or certificate to act as an appraiser in at least one state;

(b) must not have had a license or certificate to act as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state unless the license or certificate was subsequently granted or reinstated;

(c) must be of good moral character, as determined by the board; and

(d) shall submit to a background examination as determined by the board.

History: En. Sec. 6, Ch. 270, L. 2011.

37-54-505. Employee requirements. An appraisal management company may not:

(1) employ a person who may have any responsibility in ordering appraisal reports, providing quality control testing for appraisal reports, or communicating with appraisers regarding any potential appraisal report deficiencies who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated;

(2) enter into an independent contractor arrangement with a person who has had a license or certificate to act as an appraiser in any state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation unless the license or certificate was subsequently granted or reinstated.

History: En. Sec. 7, Ch. 270, L. 2011.

37-54-506. Appraisal review. An employee or independent contractor of the appraisal management company that performs an appraisal review for a property located in this state:

(1) must be an appraiser licensed or certified in this state; and

(2) shall comply with the review provisions of the Uniform Standards of Professional Appraisal Practice.

History: En. Sec. 8, Ch. 270, L. 2011.

37-54-507. Mandatory reporting. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board.

History: En. Sec. 9, Ch. 270, L. 2011.

37-54-508. Limitations. An appraisal management company registered in this state pursuant to this chapter may not enter into contracts or agreements with an individual for the performance of appraisals unless the company obtains verification that the individual is licensed or certified to perform appraisals pursuant to this chapter. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

History: En. Sec. 10, Ch. 270, L. 2011.

37-54-509. Certification to board — appraisal panel members. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system and process in place to verify that all appraisers on the appraisal panel of the appraisal management company are licensed or certified in this state pursuant to this chapter.

History: En. Sec. 11, Ch. 270, L. 2011.

37-54-510. Certification to board — continuing licensure. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that the appraisal management company has a system in place to verify that an appraiser to whom the appraisal management company is making an assignment for the completion of an appraisal has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation since the last time that the appraisal management company made an assignment for an appraisal to the appraiser. Verification by reference to information published on the website of the appraisal subcommittee of the federal financial institutions examination council must be considered acceptable for purposes of compliance with this section.

History: En. Sec. 12, Ch. 270, L. 2011.

37-54-511. Certification — adherence to standards. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to perform on an annual basis an appraisal review of the work of all appraisers who are performing appraisals for the appraisal management company on a periodic basis to validate that the appraisals are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice.

History: En. Sec. 13, Ch. 270, L. 2011.

37-54-512. Audits. Upon renewal, not less than 10% of the appraisal management companies in this state must be subjected to a random audit. Audited appraisal management companies shall submit the recordkeeping documentation described in 37-54-513 for the 12-month period prior to renewal and any other documentation the board requests to validate compliance with this chapter. Any costs incurred by the board during an audit may be attributed to the appraisal management company.

History: En. Sec. 14, Ch. 270, L. 2011.

37-54-513. Recordkeeping. Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has retained the following documentation in accordance with the recordkeeping provisions of the Uniform Standards of Professional Appraisal Practice and applicable state law:

(1) a full record as prescribed by the board that includes the names of the entities requesting service from the appraisal management company and the corresponding names of the appraisers that performed the appraisal services; and

(2) all certifications and supporting documentation for board registration and renewals, including audit reports required by this chapter.

History: En. Sec. 15, Ch. 270, L. 2011.

37-54-514. Appraiser independence — prohibitions. (1) An employee, director, officer, or agent of an appraisal management company registered in this state may not influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, or bribery or in any other manner, including but not limited to:

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraisal assignment or demoting or terminating or threatening to demote or terminate an appraiser;

(c) expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;

(d) conditioning the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached or on a preliminary estimate or opinion requested from an appraiser;

(e) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report or provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal;

(f) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(g) providing stock or other financial or nonfinancial benefits to an appraiser or a person related to the appraiser;

(h) allowing the removal of an appraiser from an appraiser panel without prior written notice to the appraiser; or

(i) performing any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(2) Subsection (1) may not be construed as prohibiting an appraisal management company from requesting that an appraiser:

(a) consider additional appropriate property information that falls within the original scope of work for that appraisal service;

(b) provide additional information about the basis for a valuation; or

(c) correct objective factual errors in an appraisal report.

History: En. Sec. 16, Ch. 270, L. 2011.

37-54-515. Guaranty of payment. Each appraisal management company registered in this state shall, except in cases of breach of contract, pay an appraiser for the completion of an appraisal or valuation assignment within 60 days of the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

History: En. Sec. 17, Ch. 270, L. 2011.

37-54-516. Alteration of appraisal report. An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser unless the alteration is mandated by federal laws, guidelines, or provisions. This section does not apply to the conversion of appraisal reports to data streams required by federal lending agencies.

History: En. Sec. 18, Ch. 270, L. 2011.

37-54-517. Registration. The department shall publish annually a list of appraisal management companies that have registered with the department pursuant to this chapter.

History: En. Sec. 19, Ch. 270, L. 2011.

37-54-518. Advertising. (1) An appraisal management company registered in this state shall disclose its registration number on its engagement letter for each appraisal assignment.

(2) An appraiser who completes work for an unregistered or suspended appraisal management company is subject to disciplinary action for unprofessional conduct. An appraiser shall list the appraisal management company's approved registration number in the body of the appraisal report.

History: En. Sec. 20, Ch. 270, L. 2011.

37-54-519. Unprofessional conduct. An appraisal management company engages in unprofessional conduct if it:

(1) requires an appraiser to modify any aspect of an appraisal report other than those items identified by a quality control examination, including items that are found to be incomplete within the defined scope of work in the original assignment;

(2) requires an appraiser to prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the appraisal management company of the issue;

(3) requires an appraiser to prepare an appraisal report under a timeframe that the appraiser, in the appraiser's professional judgment, believes does not allow the appraiser to meet all relevant legal and professional obligations and the appraiser has notified the appraisal management company of the issue;

(4) prohibits or inhibits legal and allowable communication between the appraiser and:

(a) the lender;

(b) a real estate licensee; or

(c) any other person from whom the appraiser, in the appraiser's professional judgment, believes information would be relevant;

(5) requires the appraiser to do anything that does not comply with:

(a) the Uniform Standards of Professional Appraisal Practice; or

(b) assignment conditions and certifications required by the client;

(6) makes any portion of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including but not limited to:

(a) a loan closing; or

(b) a specific dollar amount being achieved by the appraiser in the appraisal report.

History: En. Sec. 21, Ch. 270, L. 2011.

CHAPTERS 55 THROUGH 59
RESERVED

CHAPTER 60
PRIVATE INVESTIGATORS, PRIVATE SECURITY AND FIRE ENTITIES, AND PROCESS SERVERS

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Chapter Cross-References

Service of process and other papers, Title 25, ch. 3.
Weapons, Title 45, ch. 8, part 3.
Search and seizure, Title 46, ch. 5.
Arrest, Title 46, ch. 6.

Part 1
General

37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means an individual employed by an electronic security company, a contract security company, or a proprietary security organization to respond to security alarm system signals.

(2) "Armed" means an individual who at any time wears, carries, or possesses a firearm in the performance of professional duties.

(3) "Armed carrier service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(4) "Armed private investigator" means a private investigator who at any time wears, carries, or possesses a firearm in the performance of the individual's duties.

(5) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, or carrier service guard and who at any time wears or carries a firearm in the performance of the individual's duties.

(6) "Armored car service" means any person or security company who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(7) "Board" means the board of private security provided for in 2-15-1781.

(8) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(9) "Contract security company" means any person who undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(10) "Department" means the department of labor and industry provided for in 2-15-1701.

(11) (a) "Electronic security company" means a person who sells, installs, services, or maintains a security alarm system and who undertakes to hire, employ, and provide alarm response runners and security alarm installers on a contractual basis to another person who does not exercise direction and control over the performance of the services rendered.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(12) "Firearms course" means the course approved by the board and conducted by a firearms instructor.

(13) "Firearms instructor" means an individual who has been approved by the board to instruct firearms courses in the use of weapons.

(14) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes against the United States or any state or territory of the United States.

(15) "Licensee" means a person licensed under this chapter.

(16) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(17) "Person" means an individual, firm, company, association, organization, partnership, or corporation.

(18) "Private investigator" means a person other than an insurance adjuster who for any consideration makes or agrees to make any investigation with reference to:

(a) crimes against the United States or any state or territory of the United States;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, location, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) gathering evidence to be used before any court, board, officer, or investigating committee.

(19) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property or the direction of the movements of the public in public areas.

(20) "Process server" means a person described in 25-1-1101(1).

(21) "Proprietary security organization" means any person who employs a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(22) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each office located in this state where the business of the licensee is conducted.

(23) (a) "Security alarm installer" means an individual who sells, installs, services, or maintains security alarm systems to detect and signal unauthorized intrusion, movement, break-in, or criminal acts and is employed by an electronic security company.

(b) The term does not include a person whose primary business is that of a locksmith and who may also install closed-circuit television cameras and battery-operated door devices.

(24) (a) "Security alarm system" means an assembly of equipment and devices or a single device or a portion of a system intended to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a location.

(b) The term does not include systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a location.

(25) "Security company" means an electronic security company, a proprietary security organization, or a contract security company.

(26) "Street patrol service" means a person providing patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of the person's duties and responsibilities.

(27) "Unarmed private investigator" means a private investigator who does not wear, carry, or possess a firearm in the performance of the individual's duties.

(28) "Unarmed private security guard" means an individual who is employed by a contract security company or a proprietary security organization, whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, and who does not wear, carry, or possess a firearm in the performance of those duties.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981; amd. Sec. 2, Ch. 550, L. 1983; amd. Sec. 1, Ch. 647, L. 1985; amd. Sec. 1, Ch. 63, L. 1987; amd. Sec. 50, Ch. 83, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 332, L. 1989; amd. Sec. 1, Ch. 47, L. 1991; amd. Sec. 147, Ch. 483, L. 2001; amd. Sec. 12, Ch. 405, L. 2007; amd. Sec. 28, Ch. 502, L. 2007; amd. Sec. 1, Ch. 194, L. 2009; amd. Sec. 17, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in definition of electronic security company in (a) near beginning inserted "sells"; in definition of resident manager near middle after "operation of each" deleted "branch"; and in definition of security alarm installer in (a) inserted "sells". Amendment effective October 1, 2011.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.
Criminal mischief and arson, Title 45, ch. 6, part 1.
Criminal trespass and burglary, Title 45, ch. 6, part 2.
Theft and related offenses, Title 45, ch. 6, part 3.

37-60-102. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).

37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of security companies and their employees who are required to be licensed, firearms instructors, private investigators, and process servers to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, private investigators, or process servers.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2); amd. Sec. 3, Ch. 550, L. 1983; amd. Sec. 13, Ch. 405, L. 2007; amd. Sec. 29, Ch. 502, L. 2007; amd. Sec. 2, Ch. 194, L. 2009.

37-60-104. Restrictions on contract security company and proprietary security organization. An employee of a contract security company or proprietary security organization may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing that the employee has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3); amd. Sec. 4, Ch. 550, L. 1983; amd. Sec. 1421, Ch. 56, L. 2009.

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-105. Exemptions. (1) Except as provided in subsection (2), this chapter does not apply to:

(a) any one person employed singly and exclusively by any one employer in connection with the affairs of that employer only and when there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure that at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(c) an officer or employee of the United States, of this state, or of a political subdivision of the United States or this state while the officer or employee is engaged in the performance of official duties;

(d) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(e) an attorney at law while performing duties as an attorney at law;

(f) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities;

(g) a law student who is serving a legal internship;

(h) a collection agency or finance company licensed to do business under the laws of this state, or an employee of a collection agency or finance company licensed in this state while acting within the scope of employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or the debtor's property when the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent;

(i) special agents employed by railroad companies, provided that the railroad company notifies the board that its agents are operating in the state;

(j) insurers and insurance producers and insurance brokers licensed by the state while performing duties in connection with insurance transacted by them;

(k) individuals engaged in the collection and examination of physical material for forensic purposes;

(l) an insurance adjuster, as defined in 37-60-101;

(m) an internal investigator or auditor while making an investigation incidental to the business of the agency or company by which the investigator or auditor is singularly and regularly employed; or

(n) a person who evaluates and advises management on personnel and human resource issues in the workplace.

(2) (a) Except as provided in subsection (2)(b), persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers.

(b) Subsection (2)(a) does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306; amd. Sec. 5, Ch. 550, L. 1983; amd. Sec. 2, Ch. 647, L. 1985; amd. Sec. 2, Ch. 63, L. 1987; amd. Sec. 2, Ch. 332, L. 1989; amd. Sec. 2, Ch. 47, L. 1991; amd. Sec. 14, Ch. 405, L. 2007; amd. Sec. 3, Ch. 194, L. 2009.

Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

Part 2
Director of Department — Board

Part Cross-References

Duties and powers of Department heads, 2-15-112.

Board established, 2-15-1781.

Duties of Director, 37-1-121.

37-60-201. Organization — meetings — records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the president and authenticated by the seal of the board, must be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302; amd. Sec. 6, Ch. 550, L. 1983; amd. Sec. 40, Ch. 492, L. 2001.

37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) fixing the qualifications of resident managers, licensees, holders of identification cards, and process servers, in addition to those prescribed in Title 25, chapter 1, part 11, and in this chapter, necessary to promote and protect the public welfare;

(2) establishing, in accordance with 37-1-134, application fees for original licenses and identification cards, and providing for refunding of any fees;

(3) (a) requiring approval of the board prior to the establishment of branch offices of any licensee; and

(b) establishing qualification requirements and license fees for branch offices identified in subsection (3)(a);

(4) for the certification of private investigator, private security guard, security alarm installer, and alarm response runner training programs, including the certification of firearms training programs;

(5) for the licensure of firearms instructors;

(6) for the approval of weapons;

(7) requiring licensees, except process servers, to file an insurance policy with the board; and

(8) providing for the issuance of probationary identification cards for private investigators and security alarm installers who do not meet the requirements for age, employment experience, or written examination.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303; amd. Sec. 7, Ch. 550, L. 1983; amd. Sec. 8, Ch. 647, L. 1985; amd. Sec. 3, Ch. 63, L. 1987; amd. Sec. 115, Ch. 429, L. 1995; amd. Sec. 42, Ch. 126, L. 2005; amd. Sec. 15, Ch. 405, L. 2007; amd. Sec. 30, Ch. 502, L. 2007; amd. Sec. 18, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 deleted former (7) that read: "(7) requiring the maintenance of records"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 550, L. 1983.

37-60-212. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Part 3
Licensing

Part Cross-References

Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Licensing to follow contested case procedure, 2-4-631.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Carrying or possession of firearms, 37-60-101.
Certification of firearms training programs, 37-60-202.
Approval of weapons, 37-60-405.
Perjury, 45-7-201.
False swearing, 45-7-202.
Nondiscrimination in licensing, 49-3-204.

37-60-301. License required — process server registration required. (1) (a) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties, as defined in 37-60-101, of a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard without having first obtained a license from the board.

(b) Except as provided in 25-1-1101(2), it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent to the public that the person is licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a private investigator, a security alarm installer, an alarm response runner, a resident manager, a certified firearms instructor, or a private security guard.

(3) A person appointed by the court as a confidential intermediary under 42-6-104 is not required to be licensed under this chapter. A person who is licensed under this chapter is not authorized to act as a confidential intermediary, as defined in 42-1-103, without meeting the requirements of 42-6-104.

(4) A person who knowingly engages an unlicensed contract security company, proprietary security organization, electronic security company, branch office, private investigator, security alarm installer, alarm response runner, resident manager, certified firearms instructor, or private security guard is guilty of a misdemeanor punishable under 37-60-411.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304; amd. Sec. 10, Ch. 550, L. 1983; amd. Sec. 4, Ch. 63, L. 1987; amd. Sec. 116, Ch. 429, L. 1995; amd. Sec. 2, Ch. 360, L. 1997; amd. Sec. 164, Ch. 480, L. 1997; amd. Sec. 16, Ch. 405, L. 2007; amd. Sec. 31, Ch. 502, L. 2007; amd. Sec. 4, Ch. 194, L. 2009.

37-60-302. Resident manager required. (1) Any contract security company, electronic security company, or proprietary security organization that applies for a license under this chapter shall appoint for the duration of the license a resident manager. Each resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A separate resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under the resident manager's direct supervision and control.

(3) If a resident manager for any reason ceases to perform the duties of a resident manager on a regular basis, the licensee shall promptly notify the board of that fact.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307; amd. Sec. 11, Ch. 550, L. 1983; amd. Sec. 3, Ch. 647, L. 1985; amd. Sec. 43, Ch. 126, L. 2005; amd. Sec. 32, Ch. 502, L. 2007.

37-60-303. License or registration qualifications. (1) Except as provided in subsection (7)(a), an applicant for licensure under this chapter or an applicant for registration as a process server under this chapter is subject to the provisions of this section and shall submit evidence that the applicant:

(a) is at least 18 years of age;

(b) is a citizen of the United States or a legal, permanent resident of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard, security alarm installer, or alarm response runner shall:

(a) complete the requirements of a training program certified by the board and provide, on a form prescribed by the department, written notice of satisfactory completion of the training; and

(b) fulfill other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that the applicant:

(a) is at least 21 years of age;

(b) has at least a high school education or the equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service; and

(d) has fulfilled any other requirements as the board may by rule prescribe.

(4) The board may require an applicant to demonstrate by written examination additional qualifications as the board may by rule require.

(5) An applicant for a license as a private security patrol officer or private investigator who will wear, carry, or possess a firearm in performance of the applicant's duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as the board may by rule prescribe.

(6) Except for an applicant subject to the provisions of subsection (7)(a), the board shall require a background investigation of each applicant for licensure or registration under this chapter that includes a fingerprint check by the Montana department of justice and the federal bureau of investigation.

(7) (a) A firm, company, association, partnership, limited liability company, corporation, or other entity that intends to engage in business governed by the provisions of this chapter must be incorporated under the laws of this state or qualified to do business within this state and must be licensed by the board or, if doing business as a process server, must be registered by the board.

(b) Individual employees, officers, directors, agents, or other representatives of an entity described in subsection (7)(a) who engage in duties that are subject to the provisions of this part must be licensed pursuant to the requirements of this part or, if doing business as a process server, must be registered by the board.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308; amd. Sec. 12, Ch. 550, L. 1983; amd. Sec. 4, Ch. 647, L. 1985; amd. Sec. 5, Ch. 63, L. 1987; amd. Sec. 37, Ch. 481, L. 1997; amd. Sec. 11, Ch. 375, L. 2003; amd. Sec. 44, Ch. 126, L. 2005; amd. Sec. 17, Ch. 405, L. 2007; amd. Sec. 33, Ch. 502, L. 2007; amd. Sec. 19, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) after "submit evidence" deleted "under oath"; and in (2)(a) near middle substituted "department" for "board". Amendment effective October 1, 2011.

37-60-304. Licenses and registration — application form and content. (1) An application for a license or for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board.

(2) An application must be made under oath and must include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, an electronic security company, a branch office, a certified firearms instructor, a private investigator, a security alarm installer, an alarm response runner, a resident manager, or a private security guard or registered as a process server;

(e) except for an applicant pursuant to 37-60-303(7)(a), one recent photograph of the applicant, of a type prescribed by the department, and one classifiable set of the applicant's fingerprints;

(f) a statement of the applicant's age and experience qualifications, except for an applicant pursuant to 37-60-303(7)(a); and

(g) other information, evidence, statements, or documents as may be prescribed by the rules of the board.

(3) The board shall verify the statements in the application.

(4) The submittal of fingerprints is a prerequisite to the issuance of a license or certificate of registration to an applicant, other than an applicant under 37-60-303(7)(a), by means of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979; amd. Sec. 13, Ch. 550, L. 1983; amd. Sec. 5, Ch. 647, L. 1985; amd. Sec. 6, Ch. 63, L. 1987; amd. Sec. 12, Ch. 375, L. 2003; amd. Sec. 45, Ch. 126, L. 2005; amd. Sec. 106, Ch. 467, L. 2005; amd. Sec. 18, Ch. 405, L. 2007; amd. Sec. 34, Ch. 502, L. 2007; amd. Sec. 5, Ch. 194, L. 2009.

37-60-305. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310; amd. Sec. 14, Ch. 550, L. 1983; amd. Sec. 6, Ch. 647, L. 1985.

37-60-306. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 15, Ch. 550, L. 1983; amd. Sec. 7, Ch. 647, L. 1985.

37-60-307. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312; amd. Sec. 16, Ch. 550, L. 1983; amd. Sec. 7, Ch. 63, L. 1987; amd. Sec. 3, Ch. 332, L. 1989.

37-60-308. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313; amd. Sec. 17, Ch. 550, L. 1983; amd. Sec. 8, Ch. 63, L. 1987; amd. Sec. 51, Ch. 83, L. 1989.

37-60-309. Form of license and identification cards. The license and identification card must be in a form determined by the board.

History: En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314; amd. Sec. 18, Ch. 550, L. 1983; amd. Sec. 9, Ch. 63, L. 1987; amd. Sec. 3, Ch. 360, L. 1997; amd. Sec. 35, Ch. 502, L. 2007.

37-60-310. Display of license and identification card. (1) A license must at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) A holder of an identification card shall carry the card while performing the cardholder's duties. A peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315; amd. Sec. 20, Ch. 550, L. 1983; amd. Sec. 10, Ch. 63, L. 1987; amd. Sec. 4, Ch. 360, L. 1997; amd. Sec. 36, Ch. 502, L. 2007.

37-60-311. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329; amd. Sec. 21, Ch. 550, L. 1983; amd. Sec. 11, Ch. 63, L. 1987; amd. Sec. 117, Ch. 429, L. 1995; amd. Sec. 53, Ch. 271, L. 2003.

37-60-313. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Nontransferability of license — record changes. (1) A license issued under this chapter is not transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors, name, address, employment, or other material change in the information previously furnished

or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon the change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317; amd. Sec. 22, Ch. 550, L. 1983; amd. Sec. 37, Ch. 502, L. 2007.

37-60-315. Repealed. Sec. 50, Ch. 502, L. 2007.

History: En. Sec. 1, Ch. 360, L. 1997.

37-60-316 through 37-60-319 reserved.

37-60-320. Fees. (1) The fees prescribed by the board and collected by the department must be deposited into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. Sec. 19, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

37-60-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327; amd. Sec. 23, Ch. 550, L. 1983; amd. Sec. 12, Ch. 63, L. 1987.

37-60-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 24, Ch. 550, L. 1983; amd. Sec. 13, Ch. 63, L. 1987.

Part 4
Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee is at all times legally responsible for the good conduct in the business of each employee, including the manager.

History: En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318; amd. Sec. 1422, Ch. 56, L. 2009.

Cross-References

Agency, Title 28, ch. 10.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or representative of the county attorney any information that the licensee or officer, director, partner, or manager of a licensee may acquire as to any criminal offense but may not divulge to any other person, except as required by law, any information acquired except at the direction of the employer or client for whom the information was obtained.

(2) A licensee or officer, director, partner, manager, or employee of a licensee may not knowingly make any false report to an employer or client for whom information was being obtained.

(3) A written report may not be submitted to a client except by the licensee or a person authorized by the licensee, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) A licensee or officer, director, partner, manager, or employee of a licensee may not use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that the licensee or officer, director, partner, manager, or employee of a licensee is connected in any way with the federal government, a state government, a law enforcement agency, or any political subdivision of a state government unless the licensee has a contract with the agency.

(5) A licensee or officer, director, partner, manager, or employee of a licensee may not enter any private building or portion of a private building without the consent of the owner or of the person in legal possession of the private building.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319; amd. Sec. 25, Ch. 550, L. 1983; amd. Sec. 38, Ch. 502, L. 2007.

Cross-References

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating public servant, 45-7-209.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business must contain the licensee's name, address, and license number as they appear in the records of the board.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321; amd. Sec. 26, Ch. 550, L. 1983; amd. Sec. 39, Ch. 502, L. 2007.

37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing information relative to the employer's employees that may be prescribed by the board.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320; amd. Sec. 27, Ch. 550, L. 1983; amd. Sec. 1423, Ch. 56, L. 2009.

37-60-405. Approval of weapons. The weapons to be carried by armed licensees or holders of identification cards as private security personnel or private investigators must be approved by the board.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328; amd. Sec. 28, Ch. 550, L. 1983; amd. Sec. 14, Ch. 63, L. 1987; amd. Sec. 19, Ch. 405, L. 2007.

Cross-References

Weapons, Title 45, ch. 8, part 3.

37-60-406. Repealed. Sec. 50, Ch. 502, L. 2007.

History: En. Sec. 29, Ch. 550, L. 1983; amd. Sec. 15, Ch. 63, L. 1987; amd. Sec. 255, Ch. 800, L. 1991.

37-60-407. Regulation of uniforms, badges, and equipment. (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

History: En. Sec. 30, Ch. 550, L. 1983; amd. Sec. 16, Ch. 63, L. 1987.

Cross-References

Impersonating public servant, 45-7-209.

37-60-408. Restrictions on use of certain automatic dial-up systems. No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

History: En. Sec. 1, Ch. 240, L. 1985.

37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a licensed security alarm installer. Work performed by an electrician under this section is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

History: En. Sec. 9, Ch. 647, L. 1985; amd. Sec. 40, Ch. 502, L. 2007.

37-60-410 reserved.

37-60-411. Penalties — investigation — enforcement — review. (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000, by imprisonment of not more than 1 year, or by both fine and imprisonment.

(2) The board shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within the prosecutor's jurisdiction.

History: En. Sec. 31, Ch. 550, L. 1983; amd. Sec. 17, Ch. 63, L. 1987; amd. Sec. 118, Ch. 429, L. 1995.

CHAPTER 61
ATTORNEYS AT LAW

Part 1 — Licensing Authorities

37-61-101. Repealed.
37-61-102. Attorneys' examining board — appointment, quorum, and powers.
37-61-103. Compensation and expenses of members of board.

Part 2 — Licensing

37-61-201. Who considered to be practicing law.
37-61-202. Repealed.
37-61-203. Clerk, sheriff, or coroner may not practice law.
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37-61-205. Repealed.
37-61-206. Repealed.
37-61-207. Oath.
37-61-208. Repealed.
37-61-209. Repealed.
37-61-210. Penalty for practicing without license.
37-61-211. Annual license tax — municipal tax prohibited.
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37-61-416. Party may appear in person or by attorney.
37-61-417. Attorney may defend in person.
37-61-418. Attorney may see prisoner.
37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.
37-61-421. Attorney's or litigant's liability for excess costs.

Chapter Cross-References

Power of Supreme Court to make rules governing practice and admission to bar, Art. VII, sec. 2, Mont. Const.

Restrictions on practice of law by judges, Art. VII, sec. 9, Mont. Const.

Licensed attorney — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Limited duty of attorney to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Part 1
Licensing Authorities

Part Cross-References

Limited duty of attorney to report violations of Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act, 52-3-811.

Attorneys and counselors-at-law, Rule VI, Rules of Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-101. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court shall appoint members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The board may not exceed seven members. The court may release, dismiss, or remove any member of the board and appoint other members at any time.

(2) A majority of the board is a quorum and may conduct examinations.

(3) The board shall perform the duties and render assistance in the examinations of applicants as prescribed by the court and is governed and controlled by the rules that the court may prescribe.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013; amd. Sec. 1, Ch. 221, L. 1993.

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2
Licensing

Part Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

Rules for determining residence, 1-1-215.

Licensing to follow contested case procedure, 2-4-631.

Practice of law by Workers' Compensation Judge unlawful, 2-15-1707.

Certain officers not to practice law, 3-1-601.

Restrictions on practice of law by certain officers, 7-4-2210.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-61-201. Who considered to be practicing law. Any person who holds out to the public or advertises as an attorney or who appears in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who engages in the business and duties and performs acts, matters, and things that are usually done or performed by an attorney at law in the practice of that profession for the purposes of parts 1 through 3 of this chapter is considered to be practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009; amd. Sec. 1424, Ch. 56, L. 2009.

37-61-202. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part); amd. Sec. 60, Ch. 10, L. 1993.

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner may not, during the continuance in office, practice as attorney in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119; amd. Sec. 1425, Ch. 56, L. 2009.

37-61-204. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002; amd. sec. 36, Ch. 308, L. 1995.

37-61-205. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015; amd. Sec. 1, Ch. 220, L. 1983; amd. Sec. 1, Ch. 493, L. 1993.

37-61-206. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

37-61-207. Oath. Every person on admission shall take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney with fidelity to the best of the person's knowledge and ability. A certificate of the oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004; amd. Sec. 1426, Ch. 56, L. 2009.

Cross-References

Oath defined, 1-1-201.
Oaths, Title 1, ch. 6.

37-61-208. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

37-61-209. Repealed. Sec. 1, Ch. 198, L. 1999.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney, the person is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008; amd. Sec. 1427, Ch. 56, L. 2009.

Cross-References

Contempts, Title 3, ch. 1, part 5.
Justices' Courts, Title 3, ch. 10.
City Courts, Title 3, ch. 11.
Procedure in Justices' Courts, Title 25, ch. 31.
Payment of attorney fees to unlicensed persons forbidden, 37-61-215.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice within the state is required to pay a license tax of $25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) (a) The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:

(i) commission on code of judicial conduct;
(ii) commission on courts of limited jurisdiction;
(iii) commission on practice;
(iv) commission on technology;
(v) district court council;
(vi) judicial nomination commission;
(vii) judicial standards commission;
(viii) sentence review division; and
(ix) uniform district court rules commission.

(b) The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.

(4) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010; amd. Sec. 1, Ch. 379, L. 1989; amd. Sec. 1, Ch. 420, L. 2005.

Cross-References

Disposition of fees, 3-2-404.
Contribution of fees to judges' retirement fund, 19-5-404.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

Cross-References

Disposition of fees, 3-2-404.
Contribution of fees to judges' retirement fund, 19-5-404.

37-61-214. Penalty for practicing without certificate indicating payment of tax. An attorney may not practice or be permitted to practice in any of the courts of record in this state until the attorney has paid a license tax for the current fiscal year and procured a certificate, as provided in 37-61-211, and any attorney violating this section is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than $25.

History: En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012; amd. Sec. 1428, Ch. 56, L. 2009.

37-61-215. Allowance of attorney fees to unlicensed persons forbidden — authorized paralegal fees. (1) It is unlawful for any court within this state to allow attorney fees in any action or proceeding before the court in which attorney fees are allowed by law to either party to an action or proceeding when the party is represented by anyone other than a duly admitted or licensed attorney at law.

(2) This section does not prevent the award of paralegal fees as a component of attorney fees as provided in 25-10-304.

History: En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023; amd. Sec. 4, Ch. 443, L. 2009.

Part 3
Disbarment and Suspension

Part Cross-References

Orders of Supreme Court of Montana relating to Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.
Rules of Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.
Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.
Pleadings, motions, and other papers, Title 25, ch. 4.
Trials, Title 25, ch. 7.
Montana Rules of Civil Procedure, Title 25, ch. 20.
Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-301. Disbarment. (1) The supreme court of the state has exclusive jurisdiction to remove or suspend attorneys at law.

(2) An attorney may be removed or suspended for any of the following causes arising after admission to practice:

(a) conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring the individual to do or forbear an act connected with or in the course of the legal profession that the individual ought in good faith to do or forbear and any violation of the oath taken by the individual or of the duties as an attorney;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending the attorney's name to be used as attorney by another person who is not an attorney;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part); amd. Sec. 1429, Ch. 56, L. 2009.

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under 37-61-301(2)(b), (2)(c), or (2)(d) may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

Cross-References

Mileage allowance, 2-18-503.

Witness fees, Title 26, ch. 2, part 5.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys of the court and that the party be precluded from practicing as an attorney in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038; amd. Sec. 1430, Ch. 56, L. 2009.

Cross-References

Duty of Clerk of Supreme Court to keep roll of attorneys, 3-2-402.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney has authority to:

(a) bind the attorney's client in any steps of an action or proceeding by agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by the attorney's client in an action or proceeding during the pendency of an action or proceeding or after judgment unless a revocation of authority is filed and, upon the payment of the money and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of the party's attorney of record in the action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of the party until the attorney withdraws the attorney's appearance in the action or proceeding or some other attorney is substituted or the original attorney's authority is otherwise terminated and entry of the substitution or termination is made in the record of the action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101; amd. Sec. 1431, Ch. 56, L. 2009.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which the attorney appears and may stay all proceedings until the authority is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121; amd. Sec. 1432, Ch. 56, L. 2009.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then, the adverse party shall recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103; amd. Sec. 1433, Ch. 56, L. 2009.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as an attorney, a party to an action for whom the attorney was acting as attorney must, before any further proceedings are had against the party, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104; amd. Sec. 1434, Ch. 56, L. 2009.

37-61-406. Penalty for deceit. An attorney who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by the deceit or collusion treble damages. The attorney is also guilty of a misdemeanor.

History: **En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105; amd. Sec. 1435, Ch. 56, L. 2009.**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-407. Penalty for delay. An attorney who willfully delays a client's cause with a view to the attorney's own gain or willfully receives money or an allowance for or on account of money that the attorney has not laid out or become answerable for forfeits to the party injured treble damages.

History: **En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106; amd. Sec. 1436, Ch. 56, L. 2009.**

Cross-References

Willfully defined, 1-1-204.

37-61-408. Attorney prohibited from buying claim or demand for purpose of bringing action. (1) An attorney may not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action on that instrument or thing.

(2) An attorney may not, individually or by or in the name of another person, either before or after an action is brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in the person's hands or in the hands of another person a demand of any kind for the purpose of bringing an action. This subsection does not apply to an agreement between attorneys to divide between themselves the compensation to be received.

History: **(1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part); amd. Sec. 1437, Ch. 56, L. 2009.**

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: **En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: **En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.**

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: **En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.**

37-61-412. Partner of public prosecutor not to defend. An attorney may not:

(1) directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom the attorney is interested or connected, either directly or indirectly, as a law partner; or

(2) take or receive, directly or indirectly, from a defendant in a case described in subsection (1) or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, express or implied, having relation to a case described in subsection (1) or to the prosecution or defense of a case described in subsection (1).

History: **En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111; amd. Sec. 1438, Ch. 56, L. 2009.**

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of legal age may prosecute or defend the action in person or by attorney at the party's election unless the party has been judicially declared to be incompetent to manage the party's affairs. Each provision of this part relating to the conduct of an action in which the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, the party may not appear or act in person when an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115; amd. Sec. 1439, Ch. 56, L. 2009.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney from defending in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116; amd. Sec. 1440, Ch. 56, L. 2009.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of the person's liberty for any alleged cause shall admit any practicing attorney in this state whom the person restrained of liberty may desire to see or consult, to see and consult the imprisoned person, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407,

Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117; amd. Sec. 1441, Ch. 56, L. 2009.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Cross-References

Bail, Title 46, ch. 9.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon the client's cause of action or counterclaim that attaches to a verdict, report, decision, or judgment in the client's favor and the proceeds of the action or counterclaim. The lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120; amd. Sec. 1442, Ch. 56, L. 2009.

Cross-References

Judgment, Title 25, ch. 9.
Attorney fees, Title 25, ch. 10, part 3.
Execution of judgment, Title 25, ch. 13.
Liens of physicians, nurses, and hospitals, 71-3-1114.

37-61-421. Attorney's or litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

History: En. Sec. 1, Ch. 533, L. 1985.

CHAPTER 62
POLYGRAPH EXAMINERS
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Licensing
(Repealed)

Part 3 — Miscellaneous Provisions
(Repealed)

Part 1
General
(Repealed)

37-62-101. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 1, Ch. 185, L. 1983; amd. Sec. 1, Ch. 547, L. 1985.

37-62-102. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 185, L. 1983.

Part 2
Licensing
(Repealed)

37-62-201. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 4, Ch. 185, L. 1983.

37-62-202. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 6, Ch. 185, L. 1983.

37-62-203. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 5, Ch. 185, L. 1983.

37-62-204. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 9, Ch. 185, L. 1983; amd. Sec. 2, Ch. 547, L. 1985.

37-62-205. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 10, Ch. 185, L. 1983.

37-62-206. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 11, Ch. 185, L. 1983.

37-62-207. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 8, Ch. 185, L. 1983.

37-62-208. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 7, Ch. 185, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

37-62-209. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 3, Ch. 547, L. 1985.

37-62-210 and 37-62-211 reserved.

37-62-212. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 13, Ch. 185, L. 1983.

37-62-213. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 14, Ch. 185, L. 1983.

Part 3
Miscellaneous Provisions
(Repealed)

37-62-301. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 2, Ch. 185, L. 1983.

37-62-302. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 12, Ch. 185, L. 1983.

37-62-303. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 4, Ch. 547, L. 1985.

37-62-304 through 37-62-310 reserved.

37-62-311. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 15, Ch. 185, L. 1983.

CHAPTERS 63 AND 64
RESERVED

CHAPTER 65
ARCHITECTURE

Part 1 — General

37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects and Landscape Architects

37-65-201. Organization — records.

37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.
37-65-204. Rulemaking.

Part 3 — Licensing

37-65-301. License required.
37-65-302. Licensure limited to individuals.
37-65-303. Application — examination — issuance of license.
37-65-304. Repealed.
37-65-305. Repealed.
37-65-306. Repealed.
37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed.
37-65-310. License verification.
37-65-311. Emeritus status.
37-65-312 through 37-65-320 reserved.
37-65-321. Repealed.
37-65-322. Penalty.
37-65-323. Injunction.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Building construction standards, Title 50, ch. 60.

Part 1
General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual who is technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects and landscape architects provided for in 2-15-1761.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in those activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building that the state or any political subdivision of the state maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 490, L. 1983; amd. Sec. 148, Ch. 483, L. 2001; amd. Sec. 19, Ch. 11, L. 2007.

37-65-103. Exemptions. (1) This chapter does not prevent drafters, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance to buildings.

(2) This chapter may not be construed to:

(a) apply to alterations to any building that do not involve changes affecting the structural safety of a building or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for installation unless the drawings or installation involves public health or safety.

(3) The acts enumerated in subsections (1) and (2) may not be interpreted or construed as the practice of architecture.

(4) This chapter may not be construed to affect or prevent the following, provided that words, letters, figures, or other device may not be used in a manner that tends to convey the impression that the person rendering the service is an architect registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for the United States;

(b) professional engineers from performing architectural services that are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings that are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c); amd. Sec. 1443, Ch. 56, L. 2009.

Cross-References

Policy regarding state practice of architecture, 18-2-111.

Part 2
Board of Architects and Landscape Architects

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Oath defined, 1-1-201.
Oaths, Title 1, ch. 6.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1761.
Preservation of records, Title 22, ch. 3, part 2.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Perjury, 45-7-201.
False swearing, 45-7-202.
Disrupting meeting as disorderly conduct, 45-8-101.

37-65-201. Organization — records. (1) The board shall, on an annual basis, elect from among its number a president, vice president, and secretary-treasurer.

(2) The department shall keep a record of proceedings of the board.

(3) The department shall keep a register of applicants for a license, with the name of the applicant and whether the applicant was granted a license or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102; amd. Sec. 41, Ch. 492, L. 2001.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided in 37-1-133.

History: **En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981; amd. Sec. 2, Ch. 490, L. 1983; amd. Sec. 38, Ch. 481, L. 1997.**

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: **En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).**

37-65-204. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation and enforcement of Title 37, chapter 66, and this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 9, Ch. 490, L. 1983; amd. Sec. 20, Ch. 11, L. 2007.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3
Licensing

Part Cross-References

Seal defined, 1-4-201.
Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-65-301. License required. Except as provided in this chapter, a person may not practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that the person is an architect, without having qualified under this chapter.

History: **En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1); amd. Sec. 3, Ch. 490, L. 1983; amd. Sec. 1444, Ch. 56, L. 2009.**

37-65-302. Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be licensed as an architect. Only individuals shall be licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "licensed architects".

History: **En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a); amd. Sec. 4, Ch. 490, L. 1983.**

37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license. A person applying must have successfully completed the requirement of prerequisites in education and practical experience and an examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination, the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state.

History: **En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979; amd. Sec. 5, Ch. 490, L. 1983; amd. Sec. 42, Ch. 492, L. 2001; amd. Sec. 12, Ch. 196, L. 2003.**

37-65-304. Repealed. Sec. 127, Ch. 467, L. 2005.

History: **En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 43, Ch. 492, L. 2001.**

37-65-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 490, L. 1983.

37-65-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979; amd. Sec. 119, Ch. 429, L. 1995; amd. Sec. 47, Ch. 492, L. 1997; amd. Sec. 54, Ch. 271, L. 2003.

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2); amd. Sec. 1, Ch. 277, L. 1983.

37-65-308. Seal of architect. Every licensed architect must have a seal that must contain the name of the architect, the city and state of the architect's place of business, the architect's license number, and the words "Licensed Architect, State of Montana".

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105; amd. Sec. 44, Ch. 492, L. 2001.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310. License verification. Notification to the board by a board-approved entity that the entity has received verification from a state or jurisdiction in which a person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct must be considered verification in compliance with 37-1-304(2).

History: En. Sec. 45, Ch. 492, L. 2001.

37-65-311. Emeritus status. (1) A licensee who no longer practices architecture may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the appropriate database as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice architecture.

(4) The department shall reissue an active license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for active licensure, the applicant has met requirements set by the board for maintaining professional competence.

History: En. Sec. 1, Ch. 502, L. 2007.

37-65-312 through 37-65-320 reserved.

37-65-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

37-65-322. Penalty. Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $500 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1); amd. Sec. 8, Ch. 490, L. 1983.

37-65-323. Injunction. Whenever the board has reasonable cause to believe that a person is violating any provision of Title 37, chapter 66, this chapter, or a rule of the board, it may, in addition to the remedies provided in 37-65-322 or 37-66-322, as appropriate, and without prejudice, bring an action in the district court for the county in which the violation is occurring to enjoin the person from continuing to engage in the violation or from doing any act that contributes to the violation.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2); amd. Sec. 21, Ch. 11, L. 2007.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 66
LANDSCAPE ARCHITECTURE

Part 1 — General

37-66-101. Short title.
37-66-102. Purpose.
37-66-103. Definitions.
37-66-104. Acts declared unlawful.
37-66-105. Exemptions.

Part 2 — Board of Landscape Architects (Repealed)

Part 3 — Licensing

37-66-301. License required.
37-66-302. Illegal use of title.
37-66-303. Licensing restricted to individuals — partnerships — local business licensing.
37-66-304. Qualifications and application for licensure.
37-66-305. Repealed.
37-66-306. Repealed.
37-66-307. Repealed.
37-66-308. Display of license — seal of landscape architect.
37-66-309. Deposit of license fees.
37-66-310 through 37-66-320 reserved.
37-66-321. Repealed.
37-66-322. Penalty.
37-66-323. Repealed.

Part 1
General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of architects and landscape architects provided for in 2-15-1761.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Landscape architect" means a person who holds a license to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) (a) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It is the design discipline specifically oriented to addressing the problems involved in adapting the uses of land to the characteristics of the exterior environment both functionally and aesthetically.

(b) The term includes regional planning of natural resources; urban and rural planning and design; institutional design; park and recreation planning and design; contract negotiations; the preparation of project master plans, contract documents, construction specifications, construction cost estimates, and project contracts; project management; and construction management.

(c) The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 149, Ch. 483, L. 2001; amd. Sec. 22, Ch. 11, L. 2007.

37-66-104. Acts declared unlawful. It is unlawful for a person to:

(1) offer to practice or hold out to the public that the person is entitled to practice landscape architecture unless licensed and registered under this chapter;

(2) present as the person's own the license of another;

(3) give false or forged evidence to the board or any board member in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1); amd. Sec. 1445, Ch. 56, L. 2009.

37-66-105. Exemptions. (1) The provisions of this chapter do not prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) The provisions of this chapter do not apply to any business conducted in this state by a horticulturist, nursery operator, landscape nursery operator, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, an unlicensed person may not use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that the person is a licensed landscape architect unless the person is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) This chapter does not apply to a person performing any of the services mentioned in this chapter upon the person's own property.

(5) This chapter does not require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808; amd. Sec. 52, Ch. 83, L. 1989; amd. Sec. 1446, Ch. 56, L. 2009.

Cross-References

Architecture, Title 37, ch. 65.

Engineers and land surveyors, Title 37, ch. 67.

Part 2
Board of Landscape Architects
(Repealed)

37-66-201. Repealed. Sec. 24, Ch. 11, L. 2007.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981; amd. Sec. 1, Ch. 89, L. 1989.

37-66-202. Repealed. Sec. 24, Ch. 11, L. 2007.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, a person in either a public or private capacity practicing or offering to practice landscape architecture is required to submit evidence that the person is qualified to practice and is licensed under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804; amd. Sec. 46, Ch. 492, L. 2001.

37-66-302. Illegal use of title. A person may not use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that the person is a landscape architect or practicing landscape architecture unless the person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part); amd. Sec. 1447, Ch. 56, L. 2009.

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but this chapter does not prevent a licensed landscape architect from performing services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects must be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until the evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809; amd. Sec. 1448, Ch. 56, L. 2009.

37-66-304. Qualifications and application for licensure. (1) A person wishing to practice landscape architecture in this state shall apply to the department for a license.

(2) Each applicant for licensure must have successfully completed the educational, practical experience, and examination requirements prescribed by the board.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979; amd. Secs. 47, 48, Ch. 492, L. 2001; amd. Sec. 107, Ch. 467, L. 2005.

37-66-305. Repealed. Sec. 75, Ch. 492, L. 2001.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

37-66-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

37-66-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 120, Ch. 429, L. 1995; amd. Sec. 48, Ch. 492, L. 1997; amd. Sec. 55, Ch. 271, L. 2003.

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in the licensee's principal office, place of business, or place of employment.

(2) Each landscape architect must have a seal approved by the board that must contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and other words or figures that the board considers necessary. All drawings and title pages of specifications prepared by a landscape architect or under the supervision of a landscape architect must be stamped with the landscape architect's seal. This section may not be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part); amd. Sec. 53, Ch. 83, L. 1989; amd. Sec. 1449, Ch. 56, L. 2009.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-66-309. Deposit of license fees. Money received by the department for license fees from landscape architects must be deposited in the state special revenue fund for the use of the board subject to 37-1-101(6).

History: En. Sec. 23, Ch. 11, L. 2007.

37-66-310 through 37-66-320 reserved.

37-66-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

CHAPTER 67
ENGINEERS AND LAND SURVEYORS

Part 1 — General

37-67-101. Definitions.
37-67-102. Representation as practitioner to be considered as practice.
37-67-103. Exemptions.

Part 2 — Board of Professional Engineers and Professional Land Surveyors

37-67-201. Organization — meetings — seal.
37-67-202. Rulemaking.
37-67-203. Compensation of board members — expenses.
37-67-204. Record of proceedings — register of applicants.

Part 3 — Licensing

37-67-301. License required to practice or offer to practice.
37-67-302. Practice without a license a public nuisance.
37-67-303. Application — contents — examination — fees.
37-67-304. Local government not to impose fee or examination.
37-67-305. General qualifications of applicants for licensure as professional engineer or certification as engineer intern.
37-67-306. Qualifications of applicant for licensure as professional engineer.
37-67-307. Qualifications of applicant for registration as engineer intern.
37-67-308. General qualifications of applicants for licensure as professional land surveyor or certification as land surveyor intern.
37-67-309. Qualifications of applicant for licensure as professional land surveyor.
37-67-310. Qualifications of applicant for certification as land surveyor intern.
37-67-311. Examinations — fees — third-party services.
37-67-312. Licensure of professional engineers without examination by comity or endorsement.
37-67-313. Comity consideration for land surveyors from other states.
37-67-314. Issuance of licenses — seal of professional engineer or professional land surveyor — enrollment card for interns.

37-67-315. Repealed.
37-67-316. Repealed.
37-67-317. Deposit of moneys collected.
37-67-318. Repealed.
37-67-319. Repealed.
37-67-320. Sole proprietorships, firms, partnerships, and corporations — requirements — exceptions.
37-67-321. Emeritus status.
37-67-322 through 37-67-330 reserved.
37-67-331. Revocation, suspension, or refusal to renew license — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Limitations on actions arising out of work on improvements to real property, 27-2-208.

Professional service corporations, Title 35, ch. 4.

Exemption of engineers from licensure as sanitarian, 37-40-102.

Building construction standards, Title 50, ch. 60.

Professional land surveyor — entry on land — trespass exception, 70-16-111.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Surveying — actions arising from, 70-28-113.

Part 1
General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1763.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Engineer intern" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Engineering survey" means all survey activities required to support the sound conception, planning, design, construction, maintenance, operation, and association of engineering projects, but excludes the surveying of real property for the establishment of land boundaries, rights-of-way, easements, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Land surveyor intern" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying, as provided in this chapter.

(6) (a) "Practice of engineering" means:

(i) any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to the services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of ensuring compliance with drawings and specifications;

(ii) any of the functions described in subsection (6)(a)(i) that embrace the services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property.

(b) The term includes other professional services necessary to the planning, progress, and completion of any engineering services.

(c) The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and constructed features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions of land, including the alignment and grades of streets and roads in subdivisions;

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions; and

(h) locating, relocating, establishing, reestablishing, laying out, or retracing of any property line or boundary of any tract of land or road, right-of-way, easement, right-of-way easement, alignment, or elevation of any of the fixed works embraced within the practice of engineering.

(8) "Professional engineer" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been licensed as a professional engineer by the board.

(9) "Professional land surveyor" means a person who:

(a) has been licensed as a land surveyor by the board;

(b) is a professional specialist in the technique, analysis, and application of measuring land;

(c) is skilled and educated in the principles of mathematically related physical and applied sciences, relevant requirements of law for adequate evidence, and all requisites to the surveying of real property; and

(d) is engaged in the practice of land surveying.

(10) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying. Only a professional engineer or a professional land surveyor may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985; amd. Sec. 1, Ch. 108, L. 1995; amd. Sec. 150, Ch. 483, L. 2001; amd. Sec. 49, Ch. 492, L. 2001.

37-67-102. Representation as practitioner to be considered as practice. (1) A person must be considered to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

(a) practices any branch of the profession of engineering;

(b) by verbal claim, sign, advertisement, letterhead, card, or in any other way represents that the person is a professional engineer or through the use of some other title implies that the person is a professional engineer or is licensed under this chapter; or

(c) represents that the person is able to perform or does perform any engineering service or work or any other service designated by the practitioner that is recognized as engineering.

(2) A person must be considered to practice or offer to practice land surveying, within the meaning and intent of this chapter, who:

(a) engages in land surveying;

(b) by verbal claim, sign, letterhead, card, or in any other way represents that the person is a professional land surveyor or through the use of some other title implies that the person is a professional land surveyor; or

(c) represents that the person is able to perform or does perform any land surveying service or work or any other service designated by the practitioner that is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985; amd. Sec. 50, Ch. 492, L. 2001.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a lead supervisor or superintendent;

(3) the work of an employee or a subordinate of a person holding a license under this chapter or an employee of a person practicing lawfully under this chapter if the work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a license under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects when the practice is purely incidental to their practice of architecture.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985; amd. Sec. 51, Ch. 492, L. 2001.

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1763.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization — meetings — seal. (1) The board shall hold at least two regular meetings each year. Special meetings must be held at the time that the rules of the board provide. Notice of all meetings must be given in the manner that the rules provide.

(2) The board shall elect annually the following officers: a presiding officer, a vice presiding officer, and a secretary.

(3) The board shall adopt an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979; amd. Sec. 52, Ch. 492, L. 2001.

Cross-References

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking. The board may adopt rules, including rules of procedure, reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part); amd. Sec. 121, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Power of hearings officer to issue subpoenas, 2-4-611.
Allocation for administrative purposes only, 2-15-121.
Quasi-judicial boards, 2-15-124.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for licensure, which must show:

(a) the name, age, and residence of each applicant;

(b) the date of the application;

(c) the place of business of the applicant;

(d) the applicant's educational and other qualifications;
(e) the branch or branches of engineering in which the applicant qualified;
(f) whether an examination was required;
(g) whether the applicant was rejected;
(h) whether a license was granted;
(i) the date of the action of the board; and
(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript of the proceedings, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355; amd. Sec. 53, Ch. 492, L. 2001.

Cross-References
Public records, Title 2, ch. 6.
Preservation of records, Title 22, ch. 3, part 2.
Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).
Duty of Department to keep records, 37-1-101.

Part 3
Licensing

Part Cross-References
Oath defined, 1-1-201.
Proof of execution, Title 1, ch. 5, part 3.
Power of notary to take acknowledgments, 1-5-416.
Licensing to follow contested case procedure, 2-4-631.
Recognition of out-of-state licenses during disaster or emergency, 10-3-204.
Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.
Reporting disciplinary actions against licensees, 37-1-105.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Perjury, 45-7-201.
False swearing, 45-7-202.
Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, a person in either a public or private capacity practicing or offering to practice engineering or land surveying is required to submit evidence that the person is qualified to practice and is licensed as provided in this chapter. It is unlawful for a person to practice or to offer to practice in this state engineering or land surveying or to use in connection with the person's name or otherwise assume, use, or advertise any title or description tending to convey the impression that the person is a professional engineer or a professional land surveyor unless the person has been licensed under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985; amd. Sec. 54, Ch. 492, L. 2001.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References
Nuisances, Title 27, ch. 30.

37-67-303. Application — contents — examination — fees. (1) An application for licensure must be on a form furnished by the department that provides for a detailed summary of the applicant's technical work and that must contain the required references.

(2) The application fee for an engineer intern is as prescribed by the board and must accompany the application. An additional fee is not required for the issuance of a certificate.

(3) The application fee for licensure as a professional engineer is as prescribed by the board for those holding a board-approved engineer intern certificate.

(4) An applicant for a license as a professional engineer shall file an application and satisfactorily pass an examination prescribed by the board. Upon approval of an application for licensure and passage of the required examination as a professional engineer, the department shall issue a license as a professional engineer.

(5) The application fee for a land surveyor intern is as prescribed by the board and must accompany the application. An additional fee is not required for issuance of a certificate.

(6) The application fee for licensure as a professional land surveyor is as prescribed by the board for those holding a board-approved land surveyor intern certificate. Upon approval of an application for licensure as a professional land surveyor and passage of the required examinations, the department shall issue a license as a professional land surveyor.

(7) (a) The application fee for licensure as both a professional engineer and professional land surveyor is as prescribed by the board for those holding board-approved engineer intern and land surveyor intern certificates.

(b) The fee must accompany the application. Upon approval of an application for licensure as a professional engineer and professional land surveyor and passage of the required examinations, the department shall issue a license.

(8) If the board denies the issuance of a license to any applicant, the initial fee deposited must be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985; amd. Sec. 1, Ch. 72, L. 1987; amd. Sec. 2, Ch. 108, L. 1995; amd. Sec. 55, Ch. 492, L. 2001; amd. Sec. 13, Ch. 196, L. 2003; amd. Sec. 108, Ch. 467, L. 2005.

37-67-304. Local government not to impose fee or examination. A license fee or examination may not be imposed by a local government on a person licensed under this chapter to practice engineering or land surveying.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9); amd. Sec. 3, Ch. 108, L. 1995; amd. Sec. 56, Ch. 492, L. 2001.

37-67-305. General qualifications of applicants for licensure as professional engineer or certification as engineer intern. To be eligible for admission to an examination for professional engineer or engineer intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for licensure as a professional engineer. Three references must be from professional engineers with personal knowledge of the applicant's engineering experience. In the case of an application for certification as an engineer intern, the applicant shall submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 4, Ch. 108, L. 1995; amd. Sec. 57, Ch. 492, L. 2001.

37-67-306. Qualifications of applicant for licensure as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects under the direct supervision of a professional engineer, unless exempt under 37-67-320(2), and whose qualifications indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may

be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing the examinations, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more, with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 of those years the applicant has been in charge of important engineering projects, of a grade and character that indicate to the board that the applicant may be competent to practice engineering, must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be granted a license to practice engineering in this state if the applicant is otherwise qualified.

(4) Teaching engineering in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements if research, product development, or consulting has been a concurrent activity.

(5) A person who holds a doctorate degree in engineering from an institution with an engineering program approved by the board and the engineering accreditation commission of the accreditation board for engineering and technology or the Canadian engineering accreditation board and who provides a specific record of at least 4 years of progressive experience on engineering projects of a grade and character that indicate to the board that the applicant may be competent to practice engineering must be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing the examination, the applicant must be issued a license to practice engineering in this state if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985; amd. Sec. 1, Ch. 107, L. 1995; amd. Sec. 58, Ch. 492, L. 2001; amd. Sec. 20, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) in first sentence near middle substituted "whose qualifications" for "who has passed examinations of a grade and character that". Amendment effective October 1, 2011.

37-67-307. Qualifications of applicant for registration as engineer intern. The following must be considered as minimum evidence that the applicant is qualified for certification as an engineer intern:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board must be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing the examination, the applicant must be certified or enrolled as an engineer intern if the applicant is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985; amd. Sec. 5, Ch. 108, L. 1995.

37-67-308. General qualifications of applicants for licensure as professional land surveyor or certification as land surveyor intern. (1) To be eligible for admission to an examination for professional land surveyor or land surveyor intern, an applicant must be of good character and reputation. The applicant shall submit five references with the application for licensure as a professional land surveyor. Three of the references must be from professional land surveyors having personal knowledge of the applicant's land surveying experience. In the case of an application for certification as a land surveyor intern, the applicant shall submit three references, one of which must be from a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects that the applicant has been in charge of, recommendations by references, and a review of these categories. The board may require an interview if it considers one necessary.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985; amd. Sec. 2, Ch. 72, L. 1987; amd. Sec. 6, Ch. 108, L. 1995; amd. Sec. 59, Ch. 492, L. 2001.

37-67-309. Qualifications of applicant for licensure as professional land surveyor. One of the following must be considered as minimum evidence to the board that the applicant is qualified for licensure as a professional land surveyor:

(1) The applicant has a bachelor of science degree in a board-approved curriculum that includes a minimum of 40 quarter credit hours in surveying techniques, principles, and practices; the applicant presents evidence satisfactory to the board that, in addition, the applicant has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; and the applicant has passed the examinations required by the board.

(2) The applicant has 2 years of formal education in a board-approved curriculum above high school level, with at least 90 quarter credit hours that include a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board; the applicant presents evidence satisfactory to the board that, in addition, the applicant has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor; and the applicant has passed the examinations required by the board.

(3) The applicant has a bachelor of science degree in a board-approved curriculum and presents evidence satisfactory to the board that, in addition, the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and the applicant has passed the examinations required by the board.

(4) The applicant presents evidence satisfactory to the board that the applicant has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985; amd. Sec. 3, Ch. 72, L. 1987; amd. Sec. 60, Ch. 492, L. 2001.

37-67-310. Qualifications of applicant for certification as land surveyor intern. To qualify for certification as a land surveyor intern, an applicant shall present as evidence to the board at least one of the following:

(1) a bachelor of science degree in a board-approved curriculum that includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices and evidence of having passed the written examinations required by the board;

(2) at least 2 years of formal education in an approved curriculum that includes a minimum of 27 semester or 40 quarter credit hours in surveying techniques, principles, and practices, above high school level, with at least 60 semester or 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and evidence of having passed the written examinations required by the board;

(3) a bachelor of science degree in a board-approved curriculum and evidence satisfactory to the board that, in addition, the applicant has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the written examinations required by the board; or

(4) evidence satisfactory to the board that the applicant has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a professional land surveyor, and evidence of having passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985; amd. Sec. 4, Ch. 72, L. 1987; amd. Sec. 7, Ch. 108, L. 1995; amd. Sec. 61, Ch. 492, L. 2001.

37-67-311. Examinations — fees — third-party services. Examination requirements are as follows:

(1) The examinations must be held at times and places that the board directs. The board shall determine the acceptable grade on examinations.

(2) The board shall determine by rule the fees to be charged an applicant for each examination and reexamination. The fees must be commensurate with costs.

(3) The board may use a third party to provide examination and grading services.

(4) Examinations may be taken only after the applicant has met the other minimum requirements as provided in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination. Passing the examination qualifies the examinee for an engineer intern certificate if the examinee has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for licensure as a professional engineer if the examinee has met the other requirements for licensure required by this chapter.

(c) The examinations for land surveyor intern consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor intern certificate if the examinee has met all other requirements for certification required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor intern, two examinations, designated as parts III and IV, on the applied disciplines of land surveying, and an examination specifically related to land surveying in Montana. Passing these examinations qualifies the examinee for licensure as a professional land surveyor if the examinee has met the other requirements for licensure required by this chapter.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985; amd. Sec. 8, Ch. 108, L. 1995; amd. Sec. 62, Ch. 492, L. 2001; amd. Sec. 14, Ch. 196, L. 2003.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be licensed without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of examiners for engineering and surveying and whose qualifications meet the requirements of this chapter may upon application be licensed without further examination.

(3) A person holding a license to engage in the practice of engineering in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-306, and has taken and passed the examinations provided for in 37-67-306 and 37-67-311. The experience requirements of 37-67-306 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice engineering.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i); amd. Sec. 9, Ch. 108, L. 1995; amd. Sec. 63, Ch. 492, L. 2001; amd. Sec. 21, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 inserted (3) regarding licensing of person licensed in another state or country. Amendment effective October 1, 2011.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. (1) A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and that were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, the person may be asked to meet the conditions for taking examinations and to take them as the board considers necessary to determine the person's qualifications. In any event, the person shall pass a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

(2) A person holding a license to engage in the practice of land surveying in another state, territory, or possession of the United States, the District of Columbia, or any foreign country may be issued a license in this state if the person applies in the manner required by the board, meets the qualifications provided in 37-67-309, has taken and passed the examinations provided for in 37-67-309 and 37-67-311, and has taken and passed a written examination that includes questions on laws, procedures, and practices pertaining to the practice of land surveying in this state. The experience requirements of 37-67-309 may be met with experience gained after initial licensure that indicates to the board that the applicant is competent to practice land surveying.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985; amd. Sec. 10, Ch. 108, L. 1995; amd. Sec. 22, Ch. 100, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 100 inserted (2) regarding licensing of person licensed in another state or country; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of licenses — seal of professional engineer or professional land surveyor — enrollment card for interns. (1) The department shall issue to an applicant who, in the opinion of the board, has met the requirements of this chapter a license giving the licensee proper authority to engage in the practice of engineering or the practice of land surveying and to assume responsible charge of engineering or land surveying projects in this state. The license for a professional engineer must carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It must give the full name and serial number of the licensee and must be signed by the presiding officer and the secretary under the seal of the board.

(2) A license is prima facie evidence that the named person is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the license remains unrevoked or unexpired.

(3) Each licensee may, upon licensure, obtain a seal of a design authorized by the board, bearing the licensee's name, serial number, and the legend "professional engineer" or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a licensee must be signed with a written signature, dated, and stamped with the seal or a seal facsimile when issued. After the expiration of a license, it is unlawful for the licensee whose license has lapsed to affix or permit the seal and signature or seal facsimile to be affixed to any:

(a) plans, specifications, plats, drawings, reports, design information, or calculations; or

(b) projects for which the licensee was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as an engineer intern or land surveyor intern. The enrollment card must indicate that the applicant's name and status has been recorded with the board. The enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985; amd. Sec. 11, Ch. 108, L. 1995; amd. Sec. 64, Ch. 492, L. 2001.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-67-315. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947,

66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985; amd. Sec. 2, Ch. 107, L. 1995; amd. Sec. 65, Ch. 492, L. 2001; amd. Sec. 56, Ch. 271, L. 2003.

37-67-316. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 66, Ch. 492, L. 2001.

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.

37-67-318. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985; amd. Sec. 67, Ch. 492, L. 2001.

37-67-319. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.

37-67-320. Sole proprietorships, firms, partnerships, and corporations — requirements — exceptions. (1) A sole proprietorship, firm, partnership, or corporation:

(a) may engage in the practice of engineering in this state if the sole proprietor or any member of the firm, partnership, or corporation who is in responsible charge of engineering or land surveying work performed in this state is a professional engineer or a professional land surveyor, as appropriate;

(b) must have a professional engineer or professional land surveyor in residence who is in responsible charge of the engineering or land surveying work conducted in the office or place of business if the sole proprietorship, firm, partnership, or corporation is engaged in the practice of engineering or the practice of land surveying; and

(c) shall obtain a certificate of authorization from the board before engaging in the practice of engineering or the practice of land surveying.

(2) The provisions of subsection (1) do not apply to sole proprietorships, firms, partnerships, or corporations that are engaged in the practice of engineering or the practice of land surveying for their own benefit and do not practice or offer engineering or land surveying services to others.

History: En. Sec. 5, Ch. 553, L. 1985; amd. Sec. 12, Ch. 108, L. 1995; amd. Sec. 122, Ch. 429, L. 1995; amd. Sec. 68, Ch. 492, L. 2001.

37-67-321. Emeritus status. (1) A licensee who no longer practices engineering or land surveying may apply to the department for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the department shall issue a license of emeritus status to the applicant and record the applicant's name in the roster as an emeritus licensee, along with the date on which the licensee received emeritus status.

(3) An emeritus licensee may retain but may not use the licensee's seal and may not practice engineering or land surveying.

(4) The department shall reissue a license to an emeritus licensee who pays all application fees, meets all current requirements for licensure, and demonstrates to the board's satisfaction that for the 2 years preceding the application for licensure, the applicant has met requirements set by the board for maintaining professional competence.

History: En. Sec. 19, Ch. 553, L. 1985; amd. Sec. 69, Ch. 492, L. 2001; amd. Sec. 109, Ch. 467, L. 2005.

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew license — grounds — procedure — reinstatement. (1) The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found responsible for:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a licensed professional engineer or professional land surveyor;

(c) a felony;

(d) a violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) failing to comply with the Corner Recordation Act if the person is a professional land surveyor.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the board. For purposes of investigation under this section, the board may require that a licensee meet with the board.

(3) The board may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand the licensee or to revoke, suspend, or refuse to renew the license.

(4) If, after a hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand the licensee or suspend, refuse to renew, or revoke the license of the licensed professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a license to a person whose license has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985; amd. Sec. 13, Ch. 108, L. 1995; amd. Sec. 70, Ch. 492, L. 2001.

Cross-References

Oaths, Title 1, ch. 6.
Affidavits, Title 26, ch. 1, part 10.
Unfair trade practices and consumer protection, Title 30, ch. 14.
Reporting disciplinary actions against licensees, 37-1-105.
Perjury, 45-7-201.
Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations — penalties — enforcement. (1) (a) A person commits a criminal offense if the person knowingly:

(i) practices or offers to practice engineering or land surveying in this state without being licensed under this chapter;

(ii) presents or attempts to use the license or the seal of another person;

(iii) gives false or forged evidence to the board or department in obtaining a license;

(iv) impersonates another licensee;

(v) attempts to use an expired, revoked, or emeritus license; or

(vi) violates a provision of this chapter.

(b) A person convicted under subsection (1)(a) shall be fined an amount of not less than $100 or more than $500 or be incarcerated in the county jail for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or one of its political subdivisions shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

(3) The board may apply to the appropriate court for an injunction against a person found by the board to have practiced or attempted or offered to practice engineering or land surveying in this state without a valid license.

(4) If a person violates an injunction against practice without a valid license, the court may impose a fine in an amount not to exceed $25,000.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 553, L. 1985; amd. Sec. 3, Ch. 107, L. 1995; amd. Sec. 71, Ch. 492, L. 2001.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.
Forgery, 45-6-325.

CHAPTER 68
ELECTRICIANS AND ELECTRICAL SAFETY

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37-68-311. Application fee — license fee — specific exemption for apprentices.
37-68-312. Electrical contractor's license — application — fees.
37-68-313. Reasonable fees — deposit of fees and fines collected.
37-68-314. Repealed.
37-68-315. Presentation of license.
37-68-316. Citation and fine for failure to display license.
37-68-317 through 37-68-320 reserved.
37-68-321. Repealed.
37-68-322. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1
General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) ensure that the electrical installations in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part); amd. Sec. 1, Ch. 257, L. 2009.

37-68-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1764.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Electrical construction" means work performed by an individual, firm, or corporation in which an electrical connection is made to a supply of electricity or in which electricity is supplied to any electric equipment installation for which a permit is required by the authority having jurisdiction.

(4) (a) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these entities that undertakes or offers to undertake for another the planning,

laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power.

(b) The term does not include a person, firm, partnership, corporation, association, or combination of these entities that only plans or designs electrical installations.

(5) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(6) "Journeyman level experience" means being recognized as a journeyman electrician by a state or other legally authorized jurisdiction or having a minimum of 8,000 hours of practical experience.

(7) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, layout, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(8) "Practical experience" means experience gained in the electrical construction industry consisting of layout, assembly, repairs, connecting and testing electrical fixtures, apparatus, and control equipment, and wiring in residential and nonresidential settings pursuant to the provisions of the national electrical code or pursuant to the requirements of another authority having jurisdiction.

(9) "Public utility" has the meaning provided in 69-3-101.

(10) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 151, Ch. 483, L. 2001; amd. Sec. 2, Ch. 257, L. 2009.

37-68-103. Exemptions. (1) This chapter does not apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. This chapter does not prohibit a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to the permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer or to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) This chapter does not require an individual to hold a license to perform electrical work on the individual's own property or residence if the property or residence is maintained for the individual's own use.

(4) An individual, firm, partnership, or corporation may apply for licensure as an electrical contractor if all electrical work performed by the individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a licensed journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) A person who plugs in an electrical appliance where an approved electrical outlet is already installed may not be considered an installer.

(6) This chapter may not in any manner interfere with, hamper, preclude, or prohibit a vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure in which the appliance is to be connected.

History: **En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979; amd. Sec. 1, Ch. 245, L. 1987; amd. Sec. 1450, Ch. 56, L. 2009; amd. Sec. 3, Ch. 257, L. 2009.**

Cross-References

Exceptions to electrical installation requirements, 50-60-602.

Part 2
State Electrical Board

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Seal defined, 1-4-201.
Open meetings, Title 2, ch. 3, part 2.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1764.
Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-68-201. Organization — meetings — rulemaking power — seal. (1) Each July, the board shall elect from its membership a president, vice president, and secretary-treasurer.

(2) The board shall meet quarterly and at other times that the board considers necessary.

(3) The board shall:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, and for the examination of master, journeyman, and residential electricians;

(b) adopt a seal;

(c) provide for the prosecution and enjoinder of persons violating this chapter.

History: **(1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5); amd. Sec. 4, Ch. 245, L. 1987; amd. Sec. 123, Ch. 429, L. 1995; amd. Sec. 72, Ch. 492, L. 2001; amd. Sec. 110, Ch. 467, L. 2005; amd. Sec. 4, Ch. 257, L. 2009.**

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business or trade of or hold out to the public that the person is an electrician, electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A person who has received a license from the department under the provisions of this chapter shall carry the license at all times while working at a jobsite and performing work that requires a license.

(3) A private or public employment agency or labor union, or an employee of the agency or union who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: **En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979; amd. Sec. 1, Ch. 31, L. 1993; amd. Sec. 2, Ch. 402, L. 1999; amd. Sec. 5, Ch. 257, L. 2009.**

Cross-References

Installation of new security alarm systems by electrician, 37-60-409.

37-68-302. Unauthorized use of title. A person, firm, partnership, corporation, or association may not assume or use the title or designation of licensed master electrician, master electrician, licensed journeyman electrician, journeyman electrician, licensed residential electrician, residential electrician, licensed electrician, or electrician unless qualified and licensed under this chapter.

History: **En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979; amd. Sec. 6, Ch. 257, L. 2009.**

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the electrical trade with an electrician licensed under this chapter and under rules adopted by the board. The name and address of each apprentice and the name and address of the apprentice's employer must be filed with the department, and a record must be kept by the department showing the name and address of each apprentice.

History: **En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817; amd. Sec. 1451, Ch. 56, L. 2009; amd. Sec. 7, Ch. 257, L. 2009.**

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination — fees. (1) An applicant for a master electrician's license shall furnish written evidence of at least one of the following:

(a) being a graduate electrical engineer of an accredited college or university and having a minimum of 2,000 hours of legally obtained practical electrical experience; or

(b) having at least 8,000 hours of legally obtained journeyman level experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) An applicant for a license as a master electrician shall file an application on a form furnished by the department, submit appropriate fees, and satisfactorily pass an examination prescribed by the board. The board shall notify each applicant that the evidence submitted with the applicant's application is sufficient to qualify to take the examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant.

(3) The examination must consist of at least 80 questions designed to fairly test the applicant's knowledge and the applicant's technical application skills in the following subjects:

(a) the national electric code; and

(b) board rules and applicable laws under Title 37.

(4) The board shall determine by rule the fees to be charged an applicant for each examination or reexamination. The fees must be commensurate with costs.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1); amd. Sec. 2, Ch. 245, L. 1987; amd. Sec. 15, Ch. 196, L. 2003; amd. Sec. 111, Ch. 467, L. 2005; amd. Sec. 8, Ch. 257, L. 2009.**

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence of at least one of the following:

(a) completion of an approved apprenticeship program in the electrical trade;

(b) completion of an appropriate training program conducted by a bona fide union or trade association;

(c) 8,000 hours of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power; or

(d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.

(2) Applications for license and notice to the applicant must be made and given in the same manner as for master electricians' licenses. The examination for a journeyman's license must consist of at least 60 questions designed to fairly test the applicant's knowledge and the applicant's technical application skills in the following subjects:

(a) the national electric code; and

(b) board rules and applicable laws under Title 37.

(3) An applicant for a residential electrician's license shall furnish written evidence of at least one of the following:

(a) completion of an approved residential electrician apprenticeship program;

(b) 4,000 hours of legally obtained practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure;

(c) completion of an appropriate training program conducted by a bona fide union or trade association; or

(d) work in the electrical maintenance field for at least 20,000 hours, accompanied by written certification by the applicant's employer that the employer considers the applicant qualified to take the examination for which the applicant is applying and that the applicant has attained at least 20,000 hours in the electrical maintenance field while working for the employer. A minimum of 8,000 of these hours must be practical experience.

(4) Application for license and notice to the applicant must be made and given in the same manner as for master electricians' licenses. The examination for a residential electrician's license must consist of at least 50 questions designed to fairly test the applicant's knowledge and the applicant's technical application skills in the following subjects:

(a) the national electric code; and

(b) board rules and applicable laws under Title 37.

(5) (a) For the purposes of this section "electrical maintenance" means the ordinary and customary installations in a plant or onsite in addition to modifications, additions, or repairs that are limited to replacing ballasts, relamping, trouble-shooting motor controls, and replacing motors, breakers, or magnetic starters in a kind-for-kind manner. The term includes the connection of specific items of specialized equipment that can be directly connected to an existing branch circuit panel by means of factory-installed leads.

(b) The term does not include installation of a new circuit to operate the equipment described in subsection (5)(a) or installation that requires the size of supply conductors to be increased.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979; amd. Sec. 16, Ch. 196, L. 2003; amd. Sec. 112, Ch. 467, L. 2005; amd. Sec. 9, Ch. 257, L. 2009.

37-68-306. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Repealed. Sec. 13, Ch. 257, L. 2009.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979; amd. Sec. 2, Ch. 31, L. 1993; amd. Sec. 49, Ch. 492, L. 1997; amd. Sec. 17, Ch. 196, L. 2003; amd. Sec. 113, Ch. 467, L. 2005.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: **En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.**

37-68-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: **En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.**

37-68-310. Renewal of lapsed licenses. (1) It is unlawful for a person who refuses or fails to pay the renewal fee to practice electrical work in this state. A person with a lapsed license may be issued a renewal license without examination if the applicant pays the original renewal fee and any delinquency fee within 1 year of the license expiration date. Subject to subsection (2), a lapsed license that is not renewed within 1 year following its expiration date may not be renewed unless the applicant passes the examination and pays the fee required for an original license.

(2) This section may not be interpreted to conflict with 37-1-138.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981; amd. Sec. 3, Ch. 31, L. 1993; amd. Sec. 1, Ch. 113, L. 1995; amd. Sec. 124, Ch. 429, L. 1995; amd. Sec. 50, Ch. 492, L. 1997; amd. Sec. 57, Ch. 271, L. 2003; amd. Sec. 114, Ch. 467, L. 2005.**

37-68-311. Application fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by electric current shall apply for a license to the department. The application must be on a form furnished by the department and must be accompanied by an application fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the department shall issue the proper license to the applicant.

(2) A person serving in an approved journeyman apprenticeship program or a residential apprenticeship program under the supervision of a licensed electrician is exempt from the licensing provision of this section during training.

(3) In addition to the temporary permits authorized in 37-1-305, the board may, in accordance with criteria determined by the board, issue a second temporary practice permit for a person who fails the first license examination and who submits a temporary practice permit fee with a request for a second temporary practice permit to the board stating that the person intends to retake the license examination within 3 months of failing the first examination.

History: **En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979; amd. Sec. 4, Ch. 31, L. 1993; amd. Sec. 2, Ch. 203, L. 1999; amd. Sec. 18, Ch. 196, L. 2003; amd. Sec. 10, Ch. 257, L. 2009.**

37-68-312. Electrical contractor's license — application — fees. Each electrical contractor shall, on or before the date set by department rule, file with the department an application together with the appropriate fees for each firm operated by the electrical contractor in this state.

History: **En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979; amd. Sec. 5, Ch. 31, L. 1993; amd. Sec. 125, Ch. 429, L. 1995; amd. Sec. 115, Ch. 467, L. 2005.**

37-68-313. Reasonable fees — deposit of fees and fines collected. (1) All fees established by the board under this chapter must be reasonably related to the respective program costs. Fees collected by the department under this chapter must be deposited in the state special revenue fund for the use of the board.

(2) Fines collected under this chapter must be deposited in the state general fund.

History: **En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 402, L. 1999.**

37-68-314. Repealed. Sec. 13, Ch. 257, L. 2009.

History: **En. Sec. 1, Ch. 332, L. 1981; amd. Sec. 3, Ch. 245, L. 1987.**

37-68-315. Presentation of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under this chapter has the right to ask a person who is working at a jobsite doing work that requires an electrician's license to present the person's license. If the person performing the work is unable to furnish the person's license, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-68-316, from a person at a jobsite where the person is performing electrical work if the person fails to display an electrician's license at the request of the department employee.

History: En. Sec. 1, Ch. 368, L. 1995; amd. Sec. 4, Ch. 402, L. 1999; amd. Sec. 11, Ch. 257, L. 2009.

37-68-316. Citation and fine for failure to display license. (1) A citation for failure to display an electrician's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

History: En. Sec. 9, Ch. 402, L. 1999.

37-68-317 through 37-68-320 reserved.

37-68-321. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

37-68-322. Penalty. (1) (a) A person who knowingly violates any provision of this chapter may upon conviction of a violation be punished by a fine of not more than $750, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation.

(b) If a corporation or other business entity violates any provision of this chapter, it may be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or other business entity or member or agent of a partnership or association who knowingly and personally participates in or is an accessory to any violation of this chapter by the corporation, other business entity, partnership, or association is subject to the penalties prescribed in subsection (1)(a).

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter.

History: En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820; amd. Sec. 6, Ch. 31, L. 1993; amd. Sec. 12, Ch. 257, L. 2009.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

CHAPTER 69
PLUMBERS

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37-69-401. Medical gas piping installation endorsement.
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Chapter Cross-References

Construction contracts, Title 18, ch. 2.
Building construction standards, Title 50, ch. 60.

Part 1
General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1765.

(2) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts of plumbing and drainage systems.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected to the plumbing and piping.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their

respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) The term does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 661, L. 1985; amd. Sec. 152, Ch. 483, L. 2001.

37-69-102. Permanent and temporary exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) when an owner of a single-family residence used exclusively for the owner's personal use installs all sanitary plumbing and potable water supply piping or when a mobile home dealer or a manufactured housing dealer connects a mobile home or a manufactured house to existing sanitary and potable water supply facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems. For the purposes of this subsection (1)(c), a "farm or ranch" means the same as in 39-3-402.

(d) in cities, towns, water districts, and water user associations extending, repairing, or replacing their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer;

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system; and

(h) in the case of a private water supply, installation of the pump, waterline, or pressure tank, regardless of whether the pump, waterline, or pressure tank is located inside or outside the structure being served.

(2) This chapter may not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

(3) If a licensed person is not available, the council or commission of a county, city, or town or the board of directors or managers of a water or sewer district or water utility may, by ordinance, rule, or resolution, authorize an unlicensed person to perform plumbing work on a temporary basis if:

(a) the council, commission, or board of directors has provided reasonable notice by certified letter to the board; and

(b) the board has approved the temporary authorization or has failed to respond to the certified letter required under subsection (3)(a) within 30 days of the letter's postmark.

(4) The council, commission, board of directors, or board shall withdraw the temporary authorization provided for in subsection (3) when a licensed person is reasonably available.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426; amd. Sec. 2, Ch. 661, L. 1985; amd. Sec. 1, Ch. 361, L. 1999.

Cross-References

Exceptions to plumbing installation requirements, 50-60-503.

Exceptions to penalty for violation of plumbing installation requirements, 50-60-515.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing a penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, a person who engages in the field of plumbing at a time when the person is not licensed is subject to the penalties imposed by this chapter.

History: **En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979; amd. Sec. 1453, Ch. 56, L. 2009.**

Part 2
Board of Plumbers

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1765.
Preservation of records, Title 22, ch. 3, part 2.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Duty of Department to keep records, 37-1-101.
Disrupting meeting as disorderly conduct, 45-8-101.

37-69-201. Presiding officer. The board shall annually select a presiding officer from its members.

History: **(1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part); amd. Sec. 73, Ch. 492, L. 2001.**

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: **(1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).**

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Department to administer and grade examinations, 37-1-101.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Licensing investigation and review — record access, 37-1-135.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-69-301. License required. (1) Except as provided in 37-69-102, a person working at the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall first obtain a license as provided in Title 37, chapter 69, part 3.

(2) A person who receives a license under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known by the department to each licensee when a license is issued.

History: **En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1); amd. Sec. 3, Ch. 661, L. 1985; amd. Sec. 2, Ch. 361, L. 1999; amd. Sec. 5, Ch. 402, L. 1999.**

Cross-References

"Registered mail" to include registered or certified mail, 1-1-202.
Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.
Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: **En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.**

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating the applicant's place of residence, age, and experience and the place where the applicant has acquired experience and must at a time and place designated by the board be examined as to the qualifications for a license.

History: **En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part); amd. Sec. 1454, Ch. 56, L. 2009.**

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements must be met by applicants for a journeyman plumber's license:

(a) a specific record of 5 years of legally obtained experience in the field of plumbing. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination prescribed by the board conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: **En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3); amd. Sec. 1, Ch. 10, L. 1991; amd. Sec. 19, Ch. 196, L. 2003; amd. Sec. 116, Ch. 467, L. 2005.**

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years of experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years of experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination prescribed by the board for master plumbers testing the applicant's knowledge of the field of plumbing and demonstrating skill and ability in the field of plumbing.

(2) For purposes of subsection (1), 1 year of experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow the master plumber's license to be used by any person or firm, corporation, or business other than the master plumber's own for the purpose of obtaining permits or for doing plumbing work under the license.

History: **(1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947,**

66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979; amd. Sec. 1, Ch. 369, L. 1989; amd. Sec. 20, Ch. 196, L. 2003; amd. Sec. 117, Ch. 467, L. 2005.

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing must be examined as to the applicant's qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine the applicant's skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant must, upon successfully passing an examination prescribed by the board, be issued a license authorizing the applicant to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. An individual, firm, or corporation may not do the work of a master plumber unless licensed under this chapter.

(4) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part); amd. Sec. 3, Ch. 203, L. 1999; amd. Sec. 118, Ch. 467, L. 2005.

37-69-307. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979; amd. Sec. 9, Ch. 390, L. 1983; amd. Sec. 51, Ch. 492, L. 1997; amd. Sec. 21, Ch. 196, L. 2003; amd. Sec. 58, Ch. 271, L. 2003.

37-69-308. Deposit of fees and fines. (1) Money paid for license fees under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Fines collected under this chapter must be deposited in the state general fund.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 402, L. 1999.

37-69-309. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 661, L. 1985.

37-69-310. Citation and fine for failure to display license. (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

History: En. Sec. 8, Ch. 402, L. 1999; amd. Sec. 153, Ch. 483, L. 2001.

37-69-311. License of retirement status. (1) A licensee who no longer practices plumbing may apply to the department for retirement status.

(2) Upon receiving an application for retirement status accompanied by the fee established by the board, the department shall issue a license of retirement status to the applicant and record the applicant's name in the appropriate database as a holder of a license of retirement status, along with the date on which the licensee received retirement status.

(3) A license of retirement status does not allow a holder to practice plumbing under this chapter.

(4) The department shall reissue an active license to a holder of a license of retirement status who pays the appropriate active license renewal fee and meets any competency requirements established by rule by the department.

History: En. Sec. 2, Ch. 502, L. 2007.

37-69-312 through 37-69-318 reserved.

37-69-319. Proof of license — citation and fine. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a plumber licensed under Title 37, chapter 69, has the right to ask a person working at a job site doing work that requires a plumber's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-69-310, from a person at a job site where the person is performing plumbing work if the person fails to display a plumber's license or proof of licensure at the request of the department inspector.

History: En. Sec. 2, Ch. 368, L. 1995; amd. Sec. 7, Ch. 402, L. 1999.

37-69-320. License and endorsement discipline. (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee or endorsee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license or endorsement to practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence that impairs the licensee's or endorsee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted under this chapter or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted under that part; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee or endorsee disciplinary action under the jurisdiction of the board must be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 661, L. 1985; amd. Sec. 3, Ch. 221, L. 1995.

37-69-321. Repealed. Sec. 8, Ch. 661, L. 1985.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Repealed. Sec. 128, Ch. 429, L. 1995.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when the person is not exempt from the provisions of this chapter pursuant to the provisions of an enacted and subsisting ordinance of a city or town is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411; amd. Sec. 7, Ch. 661, L. 1985; amd. Sec. 1455, Ch. 56, L. 2009.

Cross-References

Misdemeanor defined, 45-2-101.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Part 4
Medical Gas Piping

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Board of plumbers, 2-15-1765.

37-69-401. Medical gas piping installation endorsement. (1) A medical gas piping installation endorsement entitles the holder to install pipe used solely for transporting gases used for medical purposes.

(2) To be eligible for endorsement under this section, a person must meet all requirements for endorsements established by the board by rule.

(3) A person with a valid medical gas piping installation endorsement from another state may install medical gas piping in this state.

(4) The board shall by rule establish the requirements for obtaining a medical gas piping installation endorsement.

History: En. Sec. 1, Ch. 221, L. 1995; amd. Sec. 119, Ch. 467, L. 2005.

37-69-402. Requirements for installation of medical gas piping. (1) After April 1, 1996, a person may not install pipe used solely to transport gases used for medical purposes unless the person holds a valid medical gas piping installation endorsement pursuant to 37-69-401.

(2) A violation of this section is punishable pursuant to 37-69-324.

History: En. Sec. 2, Ch. 221, L. 1995.

37-69-403. Proof of endorsement. (1) A state or local government plumbing code compliance inspector shall, as part of any inspection, request proof of medical gas piping installation endorsement from any person who is required to hold an endorsement under 37-69-402 or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board.

(2) An employee of a private or public employment agency or labor union, a person who is professionally responsible for a job site, or a person who holds a medical gas piping installation endorsement under Title 37, chapter 69, has the right to ask a person doing work on the job site

that requires an endorsement to provide proof of endorsement. If the person performing the work is unable to furnish proof of endorsement, the requesting person may report that fact to the board or the department.

History: En. Sec. 2, Ch. 486, L. 1999.

CHAPTER 70
HEATING, VENTILATION, AIR CONDITIONING
(Repealed)

Part 1 — General
(Repealed)

Part 2 — Board of Warm Air Heating,
Ventilation, and Air Conditioning
(Repealed)

Part 3 — Licensing
(Repealed)

Part 1
General
(Repealed)

37-70-101. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

Part 2
Board of Warm Air Heating, Ventilation, and Air Conditioning
(Repealed)

37-70-201. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

Part 3
Licensing
(Repealed)

37-70-301. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. Repealed. Sec. 195, Ch. 575, L. 1981.
History: En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-307 through 37-70-310 reserved.

37-70-311. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. Repealed. Sec. 195, Ch. 575, L. 1981.

History: En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

CHAPTER 71
PUBLIC CONTRACTORS
(Repealed)

Part 1 — General Provisions
(Repealed)

Part 2 — Licensing
(Repealed)

Part 3 — Enforcement and Penalties
(Repealed)

Part 1
General Provisions
(Repealed)

37-71-101. Repealed. Sec. 11, Ch. 558, L. 1995.

History: (1)En. Sec. 1, Ch. 178, L. 1935; re-en. Sec. 2433.1, R.C.M. 1935; amd. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; Sec. 84-3501, R.C.M. 1947; (2)En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3. R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; Sec. 84-3503, R.C.M. 1947; R.C.M. 1947, 84-3501, 84-3503(part); amd. Sec. 1, Ch. 152, L. 1983; amd. Sec. 1, Ch. 240, L. 1983; MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; 37-71-101(3) redes. 15-50-101 by Code Commissioner, 1985.

37-71-102. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3, R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; R.C.M. 1947, 84-3503(part); amd. Sec. 2, Ch. 240, L. 1983; MCA 1981, 15-50-102; redes. 37-71-102 by Code Commissioner, 1983.

37-71-103. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); amd. Sec. 3, Ch. 240, L. 1983; MCA 1981, 15-50-103; redes. 37-71-103 by Code Commissioner, 1983.

37-71-104. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 9, Ch. 178, L. 1935; re-en. Sec. 2433.9, R.C.M. 1935; R.C.M. 1947, 84-3509; amd. Sec. 4, Ch. 240, L. 1983; MCA 1981, 15-50-104; redes. 37-71-104 by Code Commissioner, 1983.

37-71-105. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 8, Ch. 178, L. 1935; re-en. Sec. 2433.8, R.C.M. 1935; amd. Sec. 2, Ch. 266, L. 1971; R.C.M. 1947, 84-3508; amd. Sec. 5, Ch. 240, L. 1983; MCA 1981, 15-50-105; redes. 37-71-105 by Code Commissioner, 1983.

Part 2
Licensing
(Repealed)

37-71-201. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 2, Ch. 178, L. 1935; re-en. Sec. 2433.2, R.C.M. 1935; amd. Sec. 13, Ch. 52, L. 1977; R.C.M. 1947, 84-3502; MCA 1981, 15-50-201; redes. 37-71-201 by Code Commissioner, 1983.

37-71-202. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(6); amd. Sec. 2, Ch. 152, L. 1983; MCA 1981, 15-50-202; redes. 37-71-202 by Code Commissioner, 1983.

37-71-203. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 7, Ch. 178, L. 1935; re-en. Sec. 2433.7, R.C.M. 1935; amd. Sec. 3, Ch. 141, L. 1967; R.C.M. 1947, 84-3507; MCA 1981, 15-50-203; redes. 37-71-203 by Code Commissioner, 1983; amd. Sec. 1, Ch. 87, L. 1985.

37-71-204. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(1) thru (4); amd. Sec. 6, Ch. 240, L. 1983; MCA 1981, 15-50-204; redes. 37-71-204 by Code Commissioner, 1983.

37-71-205 through 37-71-210 reserved.

37-71-211. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 4, Ch. 178, L. 1935; re-en. Sec. 2433.4, R.C.M. 1935; R.C.M. 1947, 84-3504; amd. Sec. 9, Ch. 240, L. 1983; MCA 1981, 15-50-211; redes. 37-71-211 by Code Commissioner, 1983.

37-71-212. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; R.C.M. 1947, 84-3506(part); amd. Sec. 10, Ch. 240, L. 1983; MCA 1981, 15-50-212; redes. 37-71-212 by Code Commissioner, 1983.

37-71-213. Repealed. Sec. 11, Ch. 558, L. 1995.

History: (1) thru (3)En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; Sec. 84-3506, R.C.M. 1947; (4)En. Sec. 11, Ch. 178, L. 1935; re-en. Sec. 2433.11, R.C.M. 1935; Sec. 84-3511, R.C.M. 1947; R.C.M. 1947, 84-3506(part), 84-3511; amd. Sec. 11, Ch. 240, L. 1983; MCA 1981, 15-50-213; redes. 37-71-213 by Code Commissioner, 1983.

Part 3
Enforcement and Penalties
(Repealed)

37-71-301. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 10, Ch. 178, L. 1935; re-en. Sec. 2433.10, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977; R.C.M. 1947, 84-3510; amd. Sec. 12, Ch. 240, L. 1983; MCA 1981, 15-50-302; redes. 37-71-301 by Code Commissioner, 1983.

37-71-302. Repealed. Sec. 11, Ch. 558, L. 1995.

History: En. Sec. 12, Ch. 178, L. 1935; re-en. Sec. 2433.12, R.C.M. 1935; amd. Sec. 15, Ch. 52, L. 1977; R.C.M. 1947, 84-3512; MCA 1981, 15-50-303; redes. 37-71-302 by Code Commissioner, 1983; Sec. 37-71-302(2) redes. 15-50-301(2) by Code Commissioner, 1985.

CHAPTER 72
CONSTRUCTION BLASTING

Part 1 — General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.
37-72-102. Penalty — injunction.

Part 2 — Regulation by Department of Labor and Industry

37-72-201. Rules for use of explosives — variances.
37-72-202. General rulemaking power.
37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Part 3 — Licensing

37-72-301. General qualifications.
37-72-302. Training and experience requirements.
37-72-303. Repealed.
37-72-304. Issuance of license.
37-72-305. Licensure of persons licensed by other jurisdictions.
37-72-306. Repealed.
37-72-307. License — form — pocket card.

Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1
General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) A person may not engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning provided in 61-9-102.

(3) This chapter does not apply to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection shall comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec. 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989; amd. Sec. 1, Ch. 514, L. 1995; amd. Sec. 154, Ch. 483, L. 2001; amd. Sec. 39, Ch. 542, L. 2005.

Cross-References

Reckless or malicious use of explosives, 45-8-333.
Possession of explosives, 45-8-335.

37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, 37-72-301, 37-72-302, 37-72-304, 37-72-305, or 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 120, Ch. 467, L. 2005.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Part 2
Regulation by Department of Labor and Industry

Part Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
Destructive device and explosive defined, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of destructive device, 45-8-334.
Possession of explosives, 45-8-335.
Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

37-72-201. Rules for use of explosives — variances. (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

(a) compliance with the rule for which a variance is sought would be impracticable; and

(b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301, 37-72-304, and 37-72-305, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for inspections related to construction blasting or for inspectors to carry out inspections related to construction blasting;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern department proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 121, Ch. 467, L. 2005.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand the licensee or to revoke, suspend, or refuse to renew the license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1456, Ch. 56, L. 2009.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.
"Destructive device" and "explosive" defined, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of destructive device, 45-8-334.
Possession of explosives, 45-8-335.
Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

Part 3
Licensing

Part Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

(1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that the person:

(a) is at least 18 years of age;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1457, Ch. 56, L. 2009.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that the person has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and

(b) at least 2 years of experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) A training program may not be approved by the department unless the program offers comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 100, L. 1997.

37-72-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 196, L. 2003.

37-72-304. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 196, L. 2003.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of an application and application fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing the person to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 and 37-72-302.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 196, L. 2003; amd. Sec. 122, Ch. 467, L. 2005.

37-72-306. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 52, Ch. 492, L. 1997; amd. Sec. 59, Ch. 271, L. 2003.

37-72-307. License — form — pocket card. (1) The department shall prescribe the form of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 73
ELEVATOR CONTRACTORS, MECHANICS, AND INSPECTORS

Part 1 — General Provisions

37-73-101. Definitions.
37-73-102. Rulemaking.

Part 2 — Licensing

37-73-201. License required.
37-73-202. Apprenticeship allowed.

37-73-203. Elevator mechanic's license — limited mechanic's license.
37-73-204. Elevator mechanic's examination — fee — reciprocity.
37-73-205 through 37-73-207 reserved.
37-73-208. Elevator inspector's license — temporary license.
37-73-209 through 37-73-211 reserved.
37-73-212. Elevator contractor's license — limited elevator contractor's license.
37-73-213 through 37-73-215 reserved.
37-73-216. Temporary elevator mechanic's license.
37-73-217 through 37-73-219 reserved.
37-73-220. License renewal — continuing education.
37-73-221. Reasonable fees — deposit of fees and fines.
37-73-222 through 37-73-224 reserved.
37-73-225. Proof of license.
37-73-226. Failure to display license.
37-73-227. Penalty.

Part 1
General Provisions

37-73-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(2) "Elevator contractor" means any person intending to engage in the business of installing, altering, or repairing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of Title 50, chapter 60, part 7.

(3) "Elevator inspector" means any person intending to engage in inspecting elevators, escalators, dumbwaiters, or other equipment subject to the provisions of Title 50, chapter 60, part 7.

(4) "Elevator mechanic" means any person intending to engage in installing, altering, repairing, or testing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of Title 50, chapter 60, part 7.

History: En. Sec. 1, Ch. 303, L. 2005.

37-73-102. Rulemaking. The department may adopt rules for the administration of this chapter and for the licensing and disciplining of elevator mechanics, elevator contractors, and elevator inspectors. The department shall adopt rules to provide for a limited mechanic's license and a limited elevator contractor's license.

History: En. Sec. 2, Ch. 303, L. 2005.

Part 2
Licensing

37-73-201. License required. (1) A person may not engage in the work of an elevator mechanic or elevator inspector or engage in the business of an elevator contractor unless the person has received a license from the department.

(2) A person who receives a license under the provisions of this chapter shall carry the license or proof of licensure at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the department and be made known to each licensee when a license is issued.

(3) The department shall establish license fees and license renewal fees that are commensurate with the costs of administering the licensing provisions of this chapter.

History: En. Sec. 3, Ch. 303, L. 2005.

37-73-202. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice with an elevator mechanic licensed under this chapter and under rules adopted by the department. The name and residence of each apprentice and the name and residence of the apprentice's employer must be filed with the department, and a record must be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 4, Ch. 303, L. 2005.

37-73-203. Elevator mechanic's license — limited mechanic's license. (1) A person intending to work as an elevator mechanic shall file a license application with the department on forms furnished by the department.

(2) Except as provided in subsection (3), an applicant shall furnish proof, under oath, that the person:

(a) has successfully completed a state-approved apprenticeship or other education program that meets requirements established by the department by rule; or

(b) has at least 3 years of experience, verified by current and previous employers, working with equipment subject to the provisions of Title 50, chapter 60, part 7, and has passed the examination provided for in 37-73-204.

(3) The department shall adopt rules for the licensure, without examination, of an applicant who can demonstrate that the applicant has worked continuously as an elevator mechanic for the 3 years prior to October 1, 2005, and has the requisite experience for licensure. An applicant under this section shall pay the required application fee and shall submit any required proof under oath.

(4) The department shall issue an elevator mechanic's license to an applicant that meets the requirements of this section.

(5) (a) The department may issue a limited mechanic's license to an applicant that authorizes a licensee to work only on platform lifts, stairway chairlifts, and dumbwaiters that are installed in private residences.

(b) The examination for a limited mechanic's license must be based on the applicable codes for the equipment that a licensee is authorized to install.

(c) The department shall issue a limited mechanic's license to an applicant that meets the requirements of this subsection (5).

History: En. Sec. 5, Ch. 303, L. 2005.

37-73-204. Elevator mechanic's examination — fee — reciprocity. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-73-203(2)(b). The department shall determine the subjects, scope, and acceptable level of performance for the examination.

(2) The department shall determine by rule the fees to be charged an applicant for each examination and reexamination that the department administers. The fees must be commensurate with costs.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-73-203(2)(b).

(4) The department may issue a license to an individual holding a valid license from another state that the department determines has standards substantially equal to this chapter upon application and without examination.

History: En. Sec. 6, Ch. 303, L. 2005.

37-73-205 through 37-73-207 reserved.

37-73-208. Elevator inspector's license — temporary license. (1) A person intending to engage in work as an elevator inspector shall apply for a license as an elevator inspector on forms provided by the department.

(2) The department may not grant an applicant an elevator inspector's license unless the applicant demonstrates that the applicant meets the current national standards for the qualifications of elevator inspectors. The department shall designate by rule the national standards that must be met by an applicant.

(3) A newly hired elevator inspector who is not properly certified may conduct inspections for up to 6 months under a temporary license if the elevator inspector is supervised during the 6-month period of temporary licensure by appropriately certified personnel.

History: En. Sec. 7, Ch. 303, L. 2005; amd. Sec. 41, Ch. 502, L. 2007.

37-73-209 through 37-73-211 reserved.

37-73-212. Elevator contractor's license — limited elevator contractor's license. (1) A person intending to engage in business as an elevator contractor shall apply for a license as an elevator contractor on forms provided by the department.

(2) An applicant shall provide the department with the following:

(a) if the applicant is an individual or sole proprietor, the name, residential address, and business address of the applicant;

(b) if the applicant is a domestic business entity, the name and business address of the business entity and the name and residential address of the business entity's principal officer;

(c) if the applicant is a foreign business entity, the name and address of a state resident authorized to accept service of process or other notices on the business entity's behalf;

(d) evidence of insurance coverage required in 50-60-716; and

(e) other information that the department may require.

(3) The department shall issue an elevator contractor's license to an applicant that meets the requirements of this section.

(4) The department may issue a limited elevator contractor's license to an applicant that limits a licensee to the business of installing, altering, and repairing elevators, platform lifts, stairway chairlifts, and dumbwaiters in private residences. The department shall issue a limited elevator contractor's license to an applicant that meets the requirements of this section.

History: **En. Sec. 8, Ch. 303, L. 2005.**

37-73-213 through 37-73-215 reserved.

37-73-216. Temporary elevator mechanic's license. (1) (a) If, in the case of an emergency or disaster as defined in 10-3-103, the department determines that the number of licensed elevator mechanics is insufficient to cope with the emergency or disaster, the department shall contact the licensed elevator contractors operating in the state and request that the elevator contractors certify to the department any persons in their employ who have an acceptable combination of education and experience to perform elevator work without direct supervision.

(b) As soon as practicable, the department shall issue to a person certified pursuant to subsection (1)(a) a temporary elevator mechanic's license.

(c) The license may not be valid for more than 30 days. However, the department may renew the license for 30-day periods in the case of a continuing emergency or disaster.

(d) The department may limit a person's temporary license to certain equipment or to certain geographical areas.

(2) (a) An elevator contractor shall inform the department if there are not any licensed elevator mechanics available to perform elevator work on behalf of the elevator contractor.

(b) The elevator contractor may submit a list to the department of any persons that the elevator contractor certifies have an acceptable combination of documented education and experience to perform the work of an elevator mechanic without direct supervision.

(c) The department shall issue a temporary elevator mechanic's license to any person, certified by an elevator contractor, who applies for a license to the department on a form supplied by the department. The department may charge a fee for a temporary license issued under this subsection that is commensurate with the department's costs in administering this subsection (2).

(d) A temporary license issued under this subsection (2) is valid for a period of 30 days, and the department shall renew the license for additional 30-day periods as long as the shortage of licensed elevator mechanics exists and the licensee is employed by the certifying elevator contractor. However, the department may refuse to renew a temporary license for any temporary licensee that the department determines has had an adequate opportunity to obtain a license under the provisions of 37-73-203 and 37-73-204.

History: **En. Sec. 9, Ch. 303, L. 2005; amd. Sec. 44, Ch. 44, L. 2007.**

37-73-217 through 37-73-219 reserved.

37-73-220. License renewal — continuing education. (1) (a) All licenses issued under this chapter expire on a date set by department rule.

(b) A licensee may renew a license by filing an application with the department on a form provided by the department and by paying a renewal fee in an amount established by the department by rule.

(2) The department shall establish by rule continuing education requirements for persons licensed as elevator mechanics or elevator inspectors. The department may not require less than 8 hours of continuing education for each license term. The continuing education requirement must be met by the licensee taking all of the required hours of continuing education in the year prior to the expiration of the license. The rules must include requirements for instructor certification, course content, and recordkeeping.

(3) The department shall issue a renewal license to applicants who meet the requirements of this section.

History: En. Sec. 10, Ch. 303, L. 2005.

37-73-221. Reasonable fees — deposit of fees and fines. (1) All fees established by the department under this chapter must be commensurate with the respective program costs. Fees collected by the department under this chapter must be deposited in an account in the state special revenue fund for the use of the program.

(2) Fines collected under this chapter must be deposited in the state general fund.

History: En. Sec. 11, Ch. 303, L. 2005.

37-73-222 through 37-73-224 reserved.

37-73-225. Proof of license. (1) An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a licensed elevator mechanic or licensed elevator inspector has the right to ask a person doing work at a job site that requires an elevator mechanic's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the department.

(2) An employee of the department may issue a citation to and collect a fine, as provided in 37-73-226, from a person at a job site where the person is performing elevator mechanic work if the person fails to display an elevator mechanic's license or proof of licensure at the request of the department inspector.

History: En. Sec. 12, Ch. 303, L. 2005.

37-73-226. Failure to display license. (1) A citation issued by an employee of the department for failure to display an elevator mechanic's license or proof of licensure must include:

(a) the time and date on which the citation is issued;

(b) the name, residential address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the department, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The department may waive or refund the fine upon finding that the person has demonstrated acceptable proof of licensure.

(5) A person who refuses to sign and accept a citation is subject to the civil penalty provided for in 37-1-318.

History: En. Sec. 13, Ch. 303, L. 2005.

37-73-227. Penalty. (1) Except as provided in subsection (4), a person or corporation knowingly violating any provision of this chapter shall upon conviction of a violation:

(a) if the violator is a person, be punished by a fine of not more than $500, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and

(b) if the violator is a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who personally and knowingly participates in or is an accessory to any violation of this chapter by the partnership, association, or corporation is subject to the penalties prescribed for individuals.

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the department, prosecute any violation of the licensing requirements of this chapter.

(4) A person who violates the provisions of 37-73-226 is not subject to an additional penalty under this section.

History: En. Sec. 14, Ch. 303, L. 2005.

CHAPTER 74
RESERVED

CHAPTER 75
DIRECT-ENTRY MIDWIFERY
(Renumbered)

Part 1 — General Provisions
(Renumbered)

Part 1
General Provisions
(Renumbered)

37-75-101. Renumbered 37-27-111. Code Commissioner, 1991.

37-75-102. Not codified.

History: En. Sec. 2, Ch. 493, L. 1989.

CHAPTER 76
ATHLETIC AGENTS
(Repealed)

Part 1 — General Provisions
(Repealed)

Part 1
General Provisions
(Repealed)

37-76-101. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 1, Ch. 410, L. 2003.

37-76-102. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 2, Ch. 410, L. 2003.

37-76-103. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 3, Ch. 410, L. 2003.

37-76-104. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 4, Ch. 410, L. 2003.

37-76-105. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 5, Ch. 410, L. 2003.

37-76-106. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 6, Ch. 410, L. 2003.

37-76-107. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 7, Ch. 410, L. 2003.

37-76-108. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 8, Ch. 410, L. 2003.

37-76-109. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 9, Ch. 410, L. 2003; amd. Sec. 123, Ch. 467, L. 2005.

37-76-110 through 37-76-112 reserved.

37-76-113. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 10, Ch. 410, L. 2003.

37-76-114. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 11, Ch. 410, L. 2003.

37-76-115. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 12, Ch. 410, L. 2003.

37-76-116. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 13, Ch. 410, L. 2003.

37-76-117. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 14, Ch. 410, L. 2003.

37-76-118. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 15, Ch. 410, L. 2003.

37-76-119. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 16, Ch. 410, L. 2003.

37-76-120. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 17, Ch. 410, L. 2003.

37-76-121. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 18, Ch. 410, L. 2003.

37-76-122. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 19, Ch. 410, L. 2003.

37-76-123. Repealed. Sec. 24, Ch. 11, L. 2007.
History: En. Sec. 20, Ch. 410, L. 2003.

TITLE 38

RESERVED

TITLE 39
LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act. Repealed.
6. Apprenticeship.
7. Women in Employment — Displaced Homemakers.
8. Professional Employer Organizations and Groups Licensing.
9. Contractor Registration.
10. Workforce Development. Terminated.
11. Primary Sector Business Workforce Training Act.
Chapters 12 through 28 reserved.
29. Veterans' Public Employment Preference.
30. Persons With Disabilities Public Employment Preference.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana. Repealed.
73. Silicosis Benefits.
74. Critical Incident Stress Management.

CHAPTER 1
DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1
General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor that regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws. The department shall investigate and enforce the laws prohibiting discrimination contained in Title 49, chapters 2 and 3, and provide a means for conciliation between parties.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979; amd. Sec. 3, Ch. 467, L. 1997.

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

Free public employment offices, 39-51-307.

Child Labor Standards Act, Title 41, ch. 2, part 1.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or the commissioner's authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause depositions to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before the commissioner in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) This chapter does not apply to labor violations preempted by federal law or regulation.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2); amd. Sec. 50, Ch. 613, L. 1989; amd. Sec. 1458, Ch. 56, L. 2009.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.
Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).
Workers' Compensation Act, Title 39, ch. 71.

39-1-104. Cooperation with federal government. The department may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.

CHAPTER 2
THE EMPLOYMENT RELATIONSHIP

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39-2-101. Employment defined.
39-2-102. What belongs to employer.
39-2-103. Confidential employment.
39-2-104. Mandatory leave of absence for employees holding public office.

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39-2-216. Private place for nursing mothers.
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39-2-307 through 39-2-312 reserved.
39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions.
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39-2-403. Duties of employee for own benefit.
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39-2-409. Preference to be given to employer's business.
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39-2-505. Repealed.

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39-2-703. Liability of railway corporation for negligence of fellow servants.
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39-2-802. Protection of discharged employees.
39-2-803. Blacklisting prohibited.
39-2-804. Violation of part a misdemeanor.

Part 9 — Wrongful Discharge From Employment

39-2-901. Short title.
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39-2-903. Definitions.
39-2-904. Elements of wrongful discharge — presumptive probationary period.
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39-2-1001. Purpose.
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39-2-1003. Requirements for closure or retrenchment.
39-2-1004. Adoption of rules.

Chapter Cross-References

Veterans — reemployment, Title 10, ch. 2, part 2.
Uniform Arbitration Act, Title 27, ch. 5.
Labor disputes — injunctions not allowed, 27-19-103.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Child labor, Title 41, ch. 2.

Part 1
General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything that an employee acquires by virtue of employment, except the compensation, if any, that is due from the employee's employer, belongs to the employer, whether acquired lawfully or unlawfully or during or after the expiration of the term of the employee's employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211; amd. Sec. 1459, Ch. 56, L. 2009.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Cross-References

Trust Code, Title 72, ch. 33 through 36.

39-2-104. Mandatory leave of absence for employees holding public office. (1) Employers of employees elected or appointed to a public office in the city, county, or state shall grant the employees leaves of absence, not to exceed 180 days per year, while they are performing public service. Employees of an employer who employs 10 or more persons must, upon complying with the requirements of subsection (2), be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service under this section.

(2) An employee granted a leave of absence shall make arrangements to return to work within 10 days following the completion of the service for which the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed physician.

(3) Unemployment benefits paid to a person by application of this section may not be charged against an employer under the unemployment insurance law.

History: En. Sec. 1, Ch. 185, L. 2009.

Part 2
General Obligations of Employers

Part Cross-References

Hazardous chemicals in workplace, Title 50, ch. 78.

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-2-202 through 39-2-204 reserved.

39-2-205. Short title. Sections 39-2-205 through 39-2-211 may be cited as the "Workforce Drug and Alcohol Testing Act".

History: En. Sec. 1, Ch. 521, L. 1997.

39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) (a) "Employee" means an individual engaged in the performance, supervision, or management of work in a:

(i) hazardous work environment;

(ii) security position; or

(iii) position:

(A) affecting public safety or public health;

(B) in which driving a motor vehicle is necessary for any part of the individual's work duties; or

(C) involving a fiduciary responsibility for an employer.

(b) The term does not include an independent contractor or an elected official who serves on the governing body of a local government.

(5) (a) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(b) The term includes the governing body of a local government.

(6) "Governing body" means the legislative authority of a local government.

(7) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(8) "Local government" means a city, town, county, or consolidated city-county.

(9) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(10) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(11) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(12) "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol.

History: En. Sec. 2, Ch. 521, L. 1997; amd. Sec. 1, Ch. 177, L. 2005; amd. Sec. 1, Ch. 315, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 315 in definition of employee in (a)(iii)(A) at end inserted "or public health", inserted (a)(iii)(B) relating to driving a motor vehicle, in (a)(iii)(C) substituted "involving a fiduciary responsibility" for "fiduciary position", and in (b) at end inserted "who serves on the governing body of a local government"; in definition of employer inserted (b) relating to a local government governing body; inserted definition of governing body; inserted definition of local government; and made minor changes in style. Amendment effective May 6, 2011.

39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

(1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days

before the terms are implemented or changed. Controlled substance and alcohol testing procedures for samples that are covered by 49 CFR, part 40, must conform to 49 CFR, part 40. For samples that are not covered by 49 CFR, part 40, the qualified testing program must contain chain-of-custody and other procedural requirements that are at least as stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United States food and drug administration. At a minimum, the policies and procedures must require:

(a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;

(b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;

(c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;

(d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;

(e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;

(f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in 39-2-208;

(g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;

(h) a description of the employer's hiring policy with respect to prospective employees who test positive;

(i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;

(j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:

(i) the tested employee;

(ii) the designated representative of the employer; or

(iii) in connection with any legal or administrative claim arising out of the employer's implementation of 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and

(k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.

(2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

(3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.

(4) The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 CFR, part 40, and the collection, transport, and confirmation testing of nonurine samples must be as stringent as the requirements of 49 CFR, part 40, in requiring split specimens as defined by the United States department of health and human services, requiring transport to a testing facility under the chain of custody, and requiring confirmation of all screened positive results using mass-spectrometry technology.

(5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to

interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.

(6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.

(7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body.

History: En. Sec. 3, Ch. 521, L. 1997; amd. Sec. 2, Ch. 177, L. 2005.

39-2-208. Qualified testing program — allowable types — procedures. Each of the following activities is permissible in the implementation of a qualified testing program:

(1) An employer may test any prospective employee as a condition of hire.

(2) An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures:

(a) An employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both.

(b) An employer may manage or contract with a third party to establish and administer a random testing process that must include:

(i) an established calendar period for testing;

(ii) an established testing rate within the calendar period;

(iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing;

(iv) all supervisory and managerial employees in the random selection and testing process; and

(v) a procedure that requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the employer to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table.

(3) An employer may require an employee to submit to followup tests if the employee has had a verified positive test for a controlled substance or for alcohol. The followup tests must be described in the employer's controlled substance and alcohol policy and may be conducted for up to 1 year from the time that the employer first requires a followup test.

(4) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption. An employer shall comply with the supervisory training requirement in 49 CFR, part 382.603, whenever the employer requires a test on the basis of reasonable suspicion.

(5) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of $1,500.

History: En. Sec. 4, Ch. 521, L. 1997.

39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

History: En. Sec. 5, Ch. 521, L. 1997; amd. Sec. 3, Ch. 177, L. 2005.

39-2-210. Limitation on adverse action. Except as provided in 50-46-320, no adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

History: En. Sec. 6, Ch. 521, L. 1997; amd. Sec. 2, Ch. 315, L. 2011.

Compiler's Comments

2011 Amendment — Code Commissioner Instruction: Chapter 315 at beginning inserted exception clause. Amendment effective May 6, 2011.

Pursuant to sec. 38(3), Ch. 419, L. 2011, the Code Commissioner in exception clause substituted "50-46-320" for "50-46-205".

39-2-211. Confidentiality of results. (1) Except as provided in subsection (2) and except for information that is required by law to be reported to a state or federal licensing authority, all information, interviews, reports, statements, memoranda, or test results received by an employer through a qualified testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

(2) Material that is confidential under subsection (1) may be used in a proceeding related to:

(a) legal action arising out of an employer's implementation of 39-2-205 through 39-2-211; or

(b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of $1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident.

History: En. Sec. 7, Ch. 521, L. 1997.

39-2-212 through 39-2-214 reserved.

39-2-215. Public employer policy on support of women and breastfeeding — unlawful discrimination. (1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum, the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

(a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or

(b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.

History: En. Sec. 1, Ch. 290, L. 2007.

39-2-216. Private place for nursing mothers. (1) All state and county governments, municipalities, and school districts and the university system shall make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express the employee's breast milk as provided in 39-2-215.

(2) All public employers are encouraged to establish policies to allow mothers who wish to continue to breastfeed after returning to work to have privacy in order to express milk and to provide facilities for milk storage.

History: En. Sec. 2, Ch. 290, L. 2007.

39-2-217. Break time for nursing mothers. All state and county governments, municipalities, and school districts and the university system shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for the employee's child, as provided in 39-2-215 and 39-2-216, if breaks are currently allowed. If breaks are not currently allowed, the public employer shall consider each case and make accommodations as possible.

The break time must, if possible, run concurrently with any break time already provided to the employee. A public employer is not required to provide break time under this section if to do so would unduly disrupt the public employer's operations.

History: En. Sec. 3, Ch. 290, L. 2007.

Part 3
General Prohibitions on Employers

Part Cross-References

Employment defined, 35-2-101.

Employer may not discharge, discipline, or refuse to hire person because of imposition of income withholding, 40-5-422.

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

Cross-References

Partial exemption of wages from execution, 25-13-614.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) A person or an entity doing business in this state may not induce, influence, persuade, or engage workers to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to the engagement. Failure to state in any advertisement, proposal, or contract for the employment of workers that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact a strike, lockout, or other trouble actually exists at that place is considered a false advertisement and misrepresentation for the purpose of this section.

(2) A worker influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) has a right of action for recovery of all damages that the worker sustained in consequence of the deception, misrepresentation, or false advertising used to induce the worker to change the worker's place of employment against anyone directly or indirectly procuring the change, and in addition, the worker shall recover reasonable attorney fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118; amd. Sec. 1460, Ch. 56, L. 2009.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-2-304. Lie detector tests prohibited. A person, firm, corporation, or other business entity or its representative may not require a person to take a polygraph test or any form of a mechanical lie detector test as a condition for employment or continuation of employment.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991; amd. Sec. 7, Ch. 358, L. 1995; amd. Sec. 1, Ch. 445, L. 1995; amd. Sec. 8, Ch. 521, L. 1997.

Cross-References

Right to equal protection of laws, Art. II, sec. 4, Mont. Const.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References

Injunctions, Title 27, ch. 19.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.
Alcoholic beverages — age restrictions, 16-3-301, 16-6-305.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-2-307 through 39-2-312 reserved.

39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product, including the use of marijuana for a debilitating medical condition as defined in 50-46-302, that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

History: En. Sec. 1, Ch. 193, L. 1993; amd. Sec. 3, Ch. 315, L. 2011.

Compiler's Comments

2011 Amendment — Code Commissioner Instruction: Chapter 315 in (3)(a) near end inserted reference to use of marijuana. Amendment effective May 6, 2011.

Pursuant to sec. 38(1), Ch. 419, L. 2011, in (3)(a) the Code Commissioner substituted "use of marijuana for a debilitating medical condition" for "medical use of marijuana".

Pursuant to sec. 38(3), Ch. 419, L. 2011, in (3)(a) the Code Commissioner substituted "50-46-302" for "50-46-102".

Cross-References

Discrimination in employment, 49-2-303.

39-2-314. Civil action limitation. (1) Except as provided in subsection (2), an individual who is discharged, discriminated against, or denied employment in violation of 39-2-313 may file a civil action against an employer within 1 year of the alleged violation and the court may require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against and may allow reasonable attorney fees to the prevailing party.

(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

History: En. Sec. 2, Ch. 193, L. 1993.

Cross-References

Wrongful discharge from employment, Title 39, ch. 2, part 9.

Enforcement, Title 49, ch. 2, part 5.

Part 4
General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the service, but if the person actually enters upon its performance, the person shall use at least slight care and diligence in performing the service.

(2) One who by the person's own special request induces another to entrust the person with the performance of a service shall perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney shall act under it as long as it remains in force or until the gratuitous employee gives notice to the employer that the employee will not act under the power of attorney.

History: (1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203; amd. Sec. 1461, Ch. 56, L. 2009.

Cross-References

Good Samaritan law — accidents, 27-1-714.

Good Samaritan law — food donations, 27-1-716.

Revocation of power of attorney, 72-5-502.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another shall perform the service and shall use ordinary care and diligence in performing the service as long as the person is employed.

History: **En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204; amd. Sec. 1462, Ch. 56, L. 2009.**

39-2-403. Duties of employee for own benefit. One who is employed at the individual's own request to do that which is more for the individual's own advantage than for that of the employer shall use great care and diligence to protect the interest of the employer.

History: **En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205; amd. Sec. 1463, Ch. 56, L. 2009.**

39-2-404. Employee shall obey employer. An employee shall substantially comply with all the directions of the employer concerning the service on which the employee is engaged, except when obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: **En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207; amd. Sec. 1464, Ch. 56, L. 2009.**

39-2-405. Employee shall conform to usage. An employee shall perform service in conformity to the usage of the place of performance unless otherwise directed by the employer or unless it is impracticable or manifestly injurious to the employer to do so.

History: **En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208; amd. Sec. 1465, Ch. 56, L. 2009.**

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless the employer has notice before employing the employee of the employee's want of skill.

(2) An employee is always bound to use the skill that the employee possesses, to the extent that the skill is required, for the service specified.

History: **(1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210; amd. Sec. 1466, Ch. 56, L. 2009.**

39-2-407. Duty to account. An employee shall, on demand, render to the employer as often as may be reasonable just accounts of all the employee's transactions in the course of service and shall, without demand, give prompt notice to the employer of everything that the employee receives for the employer's account.

History: **En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212; amd. Sec. 1467, Ch. 56, L. 2009.**

39-2-408. Duty of employee regarding items received on account of employer. An employee who receives anything on account of the employer in any capacity other than that of a mere servant is not bound to deliver it to the employer until demanded and is not at liberty to send it to the employer from a distance, without demand, in any mode involving greater risk than its retention by the employee.

History: **En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213; amd. Sec. 1468, Ch. 56, L. 2009.**

Cross-References

Servant defined, 39-2-601.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on the employee's own account similar to that entrusted to the employee by the employee's employer shall always give the employer's business the preference.

History: **En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214; amd. Sec. 1469, Ch. 56, L. 2009.**

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to the principal only for want of ordinary care in the substitute's selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215; amd. Sec. 1470, Ch. 56, L. 2009.

39-2-411. Surviving employee. When service is to be rendered by two or more persons jointly and one of them dies, the survivor shall act alone if the service to be rendered is of a type that the survivor can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217; amd. Sec. 1471, Ch. 56, L. 2009.

Part 5
Termination of Employment

Part Cross-References

Employment defined, 39-2-101.

Wrongful Discharge From Employment Act, Title 39, ch. 2, part 9.

39-2-501. Termination of employment generally. An employment is terminated by:

(1) the expiration of its appointed term;

(2) the extinction of its subject;

(3) the death of the employee; or

(4) the employee's legal incapacity to act as an employee.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302; amd. Sec. 1472, Ch. 56, L. 2009.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

39-2-502. Termination by death or incapacity of employer. (1) An employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to the employee of:

(a) the death of the employer; or

(b) the employer's legal incapacity to contract.

(2) An employee, unless the term of service has expired or unless the employee has a right to discontinue it at any time without notice, shall continue service after notice of the death or incapacity of the employer, to the extent necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to the successor. The successor shall compensate the employee for the service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303; amd. Sec. 1473, Ch. 56, L. 2009.

39-2-503. Repealed. Sec. 4, Ch. 583, L. 2001.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

39-2-504. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6
Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to the employer otherwise than in the pursuit of an independent calling and who in that service remains entirely under the control and direction of the employer, who is called the servant's master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401; amd. Sec. 1474, Ch. 56, L. 2009.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.
Servant defined, 39-2-601.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

Cross-References

Servant defined, 39-2-601.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

39-2-605. Servant to pay over without demand. A servant shall deliver to the servant's master without demand, as soon as with reasonable diligence the master can be found, everything that the servant receives for the master's account, but the servant is not bound without orders from the master to send anything to the master through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406; amd. Sec. 1475, Ch. 56, L. 2009.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if the servant is guilty of misconduct in the course of the servant's service or of gross immorality, though unconnected with the service; or

(2) if, being employed about the person of the master or in a confidential position, the master discovers that the servant has been guilty of misconduct before or after the commencement of service of a nature that, if the master had known or contemplated it, the master would not have employed the servant.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407; amd. Sec. 1476, Ch. 56, L. 2009.

Cross-References

Apprenticeship, Title 39, ch. 6.

Part 7
General Liability Arising From Employment Relationship

Part Cross-References

Negligence and comparative negligence, 27-1-701, 27-1-702.
General duty of care, 28-1-201.
Indemnity, Title 28, ch. 11, part 3.

39-2-701. Indemnification of employee. (1) An employer shall indemnify an employee, except as prescribed in subsection (2), for all that the employee necessarily expends or loses in direct consequence of the discharge of duties as an employee or of the employee's obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying the directions believed them to be unlawful.

(2) An employer is not bound to indemnify an employee for losses suffered by the employee in consequence of the ordinary risks of the business in which the employee is employed.

(3) An employer shall in all cases indemnify an employee for losses caused by the employer's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104; amd. Sec. 1477, Ch. 56, L. 2009.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to the employer for the damage caused by the negligence to the employer, and the employer is liable to the employee for the value of the services only that are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216; amd. Sec. 1478, Ch. 56, L. 2009.

Cross-References

Liability for negligent and willful acts, 27-1-701.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) A person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of the person or corporation in consequence of the neglect of any other employee of the person or corporation or by the mismanagement of any other employee and in consequence of the willful wrongs, whether of commission or omission, of any other employee of the person or corporation when the neglect, mismanagement, or wrongs are in any manner connected with the use and operation of a railway or railroad on or about which the employee is employed. A contract that restricts the liability is not legal or binding.

(2) If the death of an employee described in subsection (1) results from any injury or damage sustained, the right of action provided by subsection (1) survives and may be prosecuted and maintained by the deceased employee's heirs or personal representatives.

(3) A railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee within this state, subject to the provisions of 27-1-702, when the damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motor operator, or any other employee who has superintendence of any stationary or hand signal.

(4) A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is not a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979; amd. Sec. 1479, Ch. 56, L. 2009.

Cross-References

Invalidity of contracts that violate law, 28-2-702.

Workers' Compensation Act, Title 39, ch. 71.

Liability for death or injury to railroad employees, 69-14-1006.

39-2-704. Liability of mining company for negligence of fellow servants. (1) A company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee within this state, subject to the provisions of 27-1-702, when the damage is caused by the negligence of any superintendent, supervisor, shift boss, hoisting or other engineer, or crane operator.

(2) A contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is not a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) If the death of an employee results from any injury or damages sustained, the right of action survives and may be prosecuted and maintained by the deceased employee's heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979; amd. Sec. 1480, Ch. 56, L. 2009.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Cross-References

Contracts against policy of law, 28-2-702.

Part 8
Blacklisting and Protection of Discharged Employees

Part Cross-References

Employment defined, 39-2-101.

39-2-801. Employee to be furnished on demand with reason for discharge. (1) It is the duty of any person after having discharged any employee from service, upon demand by the discharged employee, to furnish the discharged employee in writing a statement of reasons for the discharge. Except as provided in subsection (3), if the person refuses to do so within a reasonable time after the demand, it is unlawful for the person to furnish any statement of the reasons for the discharge to any person or in any way to blacklist or to prevent the discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

(2) A written demand under this part must advise the person who discharged the employee of the possibility that the statements may be used in litigation.

(3) A response to the demand may be modified at any time and may not limit a person's ability to present a full defense in any action brought by the discharged employee. Failure to provide a response as required under subsection (1) may not limit a person's ability to present a full defense in any action brought by the discharged employee.

History: En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311; amd. Sec. 2, Ch. 573, L. 1999.

39-2-802. Protection of discharged employees. If a person, after having discharged an employee from service, prevents or attempts to prevent, by word or writing of any kind, the discharged employee from obtaining employment with any other person, the discharging person is punishable as provided in 39-2-804 and is liable in punitive damages to the discharged person, to be recovered by civil action. A person is not prohibited from informing by word or writing any person to whom the discharged person or employee has applied for employment a truthful statement of the reason for discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309; amd. Sec. 1481, Ch. 56, L. 2009.

39-2-803. Blacklisting prohibited. If a company or corporation in this state authorizes or allows any of its agents to blacklist or if a person does blacklist any discharged employee or attempts by word or writing or any other means to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, the company, corporation, or person is liable in punitive damages to the employee prevented from obtaining employment, to be recovered in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979; amd. Sec. 1482, Ch. 56, L. 2009.

Cross-References

Punitive damages, 27-1-220, 27-1-221.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

Cross-References

Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

Part 9
Wrongful Discharge From Employment

39-2-901. Short title. This part may be cited as the "Wrongful Discharge From Employment Act".

History: En. Sec. 1, Ch. 641, L. 1987.

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

History: En. Sec. 2, Ch. 641, L. 1987; amd. Sec. 1, Ch. 583, L. 2001.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises

during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of 39-2-313(3) or (4).

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987; amd. Sec. 3, Ch. 193, L. 1993.

39-2-904. Elements of wrongful discharge — presumptive probationary period. (1) A discharge is wrongful only if:

(a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(c) the employer violated the express provisions of its own written personnel policy.

(2) (a) During a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason.

(b) If an employer does not establish a specific probationary period or provide that there is no probationary period prior to or at the time of hire, there is a probationary period of 6 months from the date of hire.

History: En. Sec. 4, Ch. 641, L. 1987; amd. Sec. 2, Ch. 583, L. 2001.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest on the lost wages and fringe benefits. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1)(a).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

History: En. Sec. 5, Ch. 641, L. 1987; amd. Sec. 1, Ch. 442, L. 1993; amd. Sec. 3, Ch. 583, L. 2001.

39-2-906 through 39-2-910 reserved.

39-2-911. Limitation of actions. (1) An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

History: En. Sec. 6, Ch. 641, L. 1987.

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. The statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, disability, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

History: En. Sec. 7, Ch. 641, L. 1987; amd. Sec. 30, Ch. 472, L. 1997.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

History: En. Sec. 8, Ch. 641, L. 1987.

39-2-914. Arbitration. (1) A party may make a written offer to arbitrate a dispute that otherwise could be adjudicated under this part.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

History: En. Sec. 9, Ch. 641, L. 1987; amd. Sec. 2, Ch. 442, L. 1993.

39-2-915. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

History: En. Sec. 3, Ch. 442, L. 1993.

Part 10
Closure of or Layoff at Governmental Facility

Part Cross-References

State Employee Protection Act, Title 2, ch. 18, part 12.

39-2-1001. Purpose. The purpose of this part is to require the state of Montana to provide adequate notification when it plans the closure or retrenchment of a facility in a local area.

History: En. Sec. 1, Ch. 757, L. 1991.

39-2-1002. Definitions. As used in this part, the following definitions apply:

(1) "Closure" means the permanent shutting down of operations at a workplace.

(2) "Department" means the department of labor and industry.

(3) "Employer" means the state of Montana.

(4) "Governmental facility" means any institution, department, agency, bureau, or office operated by the state of Montana and employing more than 25 persons.

(5) "Retrenchment" means reducing the number of employees at the governmental facility by at least 250 employees over any 2-year period, provided that a reduction in the number of employees by attrition is not retrenchment.

History: En. Sec. 2, Ch. 757, L. 1991.

39-2-1003. Requirements for closure or retrenchment. Upon making a decision to close or retrench, an employer shall:

(1) immediately notify the employees, the affected employee organizations, the affected local governments, and a newspaper of general circulation in the county where the governmental facility subject to closure or retrenchment is located; and

(2) within 90 days, provide the employees, the affected employee organizations, and the affected local governments with a written impact statement that includes information concerning:

(a) the number of employees affected;

(b) the amount of the affected employees' payroll;

(c) the potential tax losses to local governments and school districts;

(d) the effect on other businesses; and

(e) the reasons for the closure or retrenchment.

History: En. Sec. 3, Ch. 757, L. 1991.

39-2-1004. Adoption of rules. The department shall adopt rules to provide procedures for an employer to meet the obligations under 39-2-1003.

History: En. Sec. 4, Ch. 757, L. 1991.

CHAPTER 3
WAGES AND WAGE PROTECTION

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(Repealed)

Part 7 — Contractors' Bonds for Wages and Benefits
(Repealed)

Part 1
General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

Cross-References

Child support income deductions and withholding, Title 40, ch. 5, parts 3 and 4.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by the employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to the employee under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307; amd. Sec. 1483, Ch. 56, L. 2009.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of an employer for good cause is entitled to the proportion of the compensation that would become due in case of full performance as the services that the employee has already rendered bear to the services that the employee was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308; amd. Sec. 1484, Ch. 56, L. 2009.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.
Equal pay for comparable worth jobs, 2-18-208, 2-18-209.
Women in employment, Title 39, ch. 7.
Illegal discrimination, Title 49, ch. 2.

Part 2
Payment of Wages

Part Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Commissioner of Labor defined, 39-3-201.
Employee defined, 39-3-201.
Employer defined, 39-3-201.
Wages defined, 39-3-201.

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

(3) "Employ" means to permit or suffer to work.

(4) "Employee" includes any person who works for another for hire, except that the term does not include a person who is an independent contractor.

(5) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

(6) (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection (6), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3); amd. Sec. 1, Ch. 554, L. 1989; amd. Sec. 1, Ch. 479, L. 1995; amd. Sec. 2, Ch. 442, L. 1999; amd. Sec. 1, Ch. 12, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 12 in definition of employee inserted exception; and made minor changes in style. Amendment effective October 1, 2011.

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

39-3-204. Payment of wages generally. (1) Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable, except as provided in 39-3-205. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or as otherwise provided for by law.

(2) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

(3) If an employee submits a timesheet after the employer's established deadline for processing employee timesheets for a particular time period and the employer does not pay the employee within the 10-day period provided for in subsection (1), the employer may pay the employee the wages due in the ensuing pay period. An employer may not withhold payment of the employee's wages beyond the next ensuing pay period. If there is not an established time period or time when wages are due and payable, the pay period is presumed to be semimonthly in length.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979; amd. Sec. 1, Ch. 134, L. 1993; amd. Sec. 1, Ch. 301, L. 2003; amd. Sec. 1, Ch. 26, L. 2009.

Cross-References

Wages of minors, 40-6-236.

39-3-205. Payment of wages when employee separated from employment prior to payday — exceptions. (1) Except as provided in subsection (2) or (3), when an employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee.

(2) Except as provided in subsection (3), when an employee is separated for cause or laid off from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon separation unless the employer has a written personnel policy governing the employment that extends the time for payment of final wages to the employee's next regular payday for the pay period or to within 15 days from the separation, whichever occurs first.

(3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:

(a) the employee agrees in writing to the withholding; or

(b) the employer files a report of the theft with the local law enforcement agency within 7 business days of the separation from employment, subject to the following conditions:

(i) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 30 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 30-day period.

(ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979; amd. Sec. 1, Ch. 583, L. 1989; amd. Sec. 1, Ch. 209, L. 1997; amd. Sec. 2, Ch. 26, L. 2009.

39-3-206. Penalty for failure to pay wages at times specified in law. (1) An employer who fails to pay an employee as provided in this part or who violates any other provision of this part is guilty of a misdemeanor. A penalty must also be assessed against and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid.

(2) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due if the employer is found in violation of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part); amd. Sec. 1, Ch. 490, L. 1991; amd. Sec. 2, Ch. 134, L. 1993.

39-3-207. Period within which employee may recover wages and penalties. (1) An employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.

(3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304; amd. Sec. 3, Ch. 442, L. 1999.

39-3-208. Contracts in violation of part void. Any contract or agreement made between an employer and an employee the provisions of which violate, evade, or circumvent this part is unlawful and void, but the employee may sue to recover the wages earned, together with the penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979; amd. Sec. 2, Ch. 490, L. 1991; amd. Sec. 3, Ch. 134, L. 1993.

Cross-References

Invalidity of contracts to violate law, 28-2-702.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. The commissioner of labor shall inquire diligently for any violations of this part and institute actions for the collection of unpaid wages and for the penalties provided for in this part in cases that the commissioner of labor considers proper and enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part); amd. Sec. 1485, Ch. 56, L. 2009.

39-3-210. Investigative powers of commissioner of labor. (1) The commissioner of labor or the commissioner of labor's authorized representatives are empowered to enter and inspect places, question employees, and investigate facts, conditions, or matters that they may consider appropriate to determine whether any person has violated any provision of this part or any rule adopted under this part or that may aid in the enforcement of the provisions of this part.

(2) In any proceeding before the commissioner of labor, the commissioner of labor or the commissioner of labor's authorized representatives may:

(a) administer oaths and examine witnesses under oath;

(b) issue subpoenas;

(c) compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and

(d) take depositions and affidavits.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979; amd. Sec. 1486, Ch. 56, L. 2009.

39-3-211. Commissioner of labor to take wage assignments. Whenever the commissioner of labor determines that one or more employees have claims for unpaid wages, the commissioner of labor shall, upon the written request of the employee, take an assignment of the claim in trust for the employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner of labor may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979; amd. Sec. 1487, Ch. 56, L. 2009.

Cross-References

Wagebrokers, Title 31, ch. 1, part 3.

39-3-212. Court enforcement of administrative decision. (1) A department default order or a decision of the hearings officer, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the department or the hearings officer in a wage claim proceeding. In a case involving failure to pay the standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4; amd. Sec. 4, Ch. 554, L. 1989; amd. Sec. 3, Ch. 490, L. 1991; amd. Sec. 5, Ch. 90, L. 1995; amd. Sec. 4, Ch. 442, L. 1999.

39-3-213. Disposition of wages. (1) The commissioner of labor may deposit wages collected under parts 2 and 4 of this chapter into the wage collection fund and with respect to wages deposited into the fund shall attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not bear interest. The wage collection fund is an agency fund as provided in 17-2-102(3)(d). The payment of wages collected may be made by means of state warrants.

(2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979; amd. Sec. 2, Ch. 5, L. 1995; amd. Sec. 28, Ch. 325, L. 1995; amd. Sec. 48, Ch. 7, L. 2001; amd. Sec. 19, Ch. 34, L. 2001; amd. Sec. 1, Ch. 14, L. 2005; amd. Sec. 4, Ch. 46, L. 2007; amd. Sec. 2, Ch. 12, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 12 in (1) in first sentence near beginning substituted "may deposit" for "shall deposit" and near middle inserted "with respect to wages deposited into the fund". Amendment effective October 1, 2011.

39-3-214. Court costs and attorney fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) A judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorney fees.

(3) If the proceeding is maintained by the commissioner of labor, court costs or fees are not required of the commissioner of labor nor is the commissioner of labor required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979; amd. Sec. 1488, Ch. 56, L. 2009.

Cross-References

Governmental entity not required to prepay fees, 25-10-405.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

39-3-215. Authority of county attorney. This part may not be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for violations of this part or to enforce the provisions of this part independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part); amd. Sec. 1489, Ch. 56, L. 2009.

Cross-References

County Attorney — duties generally, Title 7, ch. 4, part 27.

39-3-216. Mediation — hearing. (1) If the department determines that a wage claim is valid and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) If a party disputes the determination of the department prior to a contested case, the department shall conduct mediation of the dispute in accordance with guidelines to be established by department rule.

(3) When the department determines that a wage claim is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

(4) The decision of the hearings officer is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the hearings officer's decision.

History: En. Sec. 2, Ch. 554, L. 1989; amd. Sec. 4, Ch. 490, L. 1991; amd. Sec. 4, Ch. 134, L. 1993; amd. Sec. 6, Ch. 90, L. 1995; amd. Sec. 5, Ch. 442, L. 1999.

39-3-217. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. Sec. 3, Ch. 554, L. 1989; amd. Sec. 7, Ch. 90, L. 1995.

Part 3
Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.

Part 4
Minimum Wage and Overtime Compensation

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Compensation of Deputy Sheriffs and Undersheriffs, 7-4-2507 through 7-4-2509.
Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.
Standard prevailing wages in public works, Title 18, ch. 2, part 4.
Definitions, 39-3-402.

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.

39-3-402. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" means an individual employed by an employer.

(4) (a) "Farm or ranch" means an endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting an agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(b) As used in this subsection (4), "livestock" includes ostriches, rheas, and emus.

(5) "Farm worker" means a person employed to do a service performed on a farm or ranch.

(6) "Occupation" means an occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) (a) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other facility if the lodging or other facility is customarily furnished by the employer to employees. However, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee.

(b) The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee or the value of tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(c) For the purposes of this subsection (7), "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement.

History: En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302; amd. Sec. 1, Ch. 446, L. 1987; amd. Sec. 1, Ch. 216, L. 1991; amd. Sec. 6, Ch. 206, L. 1995; amd. Sec. 2, Ch. 479, L. 1995.

39-3-403. Rulemaking authority. The commissioner shall adopt and revise administrative rules to carry out the purposes of this part.

History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305; amd. Sec. 8, Ch. 90, L. 1995.

39-3-404. Minimum wage. (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), an employer shall pay to each employee a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year that includes periods requiring working hours in excess of 8 hours a day and other seasonal periods requiring working hours substantially less than 8 hours a day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed bythe employer, but the total wages paid by the employer to the employee for that part of the year during which the employee was employed by the employer may not be less than the applicable minimum wage rate multiplied by the total number of hours worked; or

(b) in lieu of the minimum wage set forth in this part, pay the farm worker a wage as defined in this section on a monthly basis. This monthly compensation must constitute a minimum wage and may not be less than $635 a month beginning January 1, 1990.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981; amd. Sec. 1, Ch. 360, L. 1985; amd. Sec. 1, Ch. 674, L. 1989; amd. Sec. 1490, Ch. 56, L. 2009.

39-3-405. Overtime compensation. (1) An employer may not employ any employee for a workweek longer than 40 hours unless the employee receives compensation for employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which the employee is employed.

(2) An overtime provision does not apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish the students with board, lodging, or other facilities may not employ the students for a workweek longer than 48 hours, unless the students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

(4) The application of the overtime provisions of subsection (1) to the employment of firefighters and law enforcement officers by the state must be consistent with the Fair Labor Standards Act of 1938, as amended, and consistent with regulations promulgated under the act.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b); amd. Sec. 1, Ch. 71, L. 2001.

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity, as these terms are defined by regulations of the commissioner, or in an outside sales capacity pursuant to 29 CFR 541.500;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or assisted living facilities who, under the terms of their employment, live in the establishment or facility;

(m) a direct seller as defined in 26 U.S.C. 3508;

(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(p) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act, 29 U.S.C. 213, when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(k) a driver employed by an employer engaged in the business of operating taxicabs;

(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(n) an employee of a sheriff's office who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 ½ times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(w) an employee of the consolidated legislative branch as provided in 5-2-503;

(x) an employee of the state or its political subdivisions employed, at the employee's option, on an occasional or sporadic basis in a capacity other than the employee's regular occupation.

Only the hours that the employee was employed in a capacity other than the employee's regular occupation may be excluded from the calculation of hours to determine overtime compensation.

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981; amd. Sec. 1, Ch. 375, L. 1983; amd. Sec. 3, Ch. 562, L. 1983; amd. Sec. 1, Ch. 640, L. 1983; amd. Sec. 3, Ch. 256, L. 1985; amd. Sec. 1, Ch. 175, L. 1987; amd. Sec. 1, Ch. 353, L. 1987; amd. Sec. 1, Ch. 650, L. 1987; amd. Sec. 1, Ch. 276, L. 1991; amd. Sec. 1, Ch. 95, L. 1993; amd. Sec. 1, Ch. 405, L. 1993; amd. Sec. 1, Ch. 48, L. 1995; amd. Sec. 1, Ch. 114, L. 1995; amd. Sec. 1, Ch. 382, L. 1995; amd. Sec. 2, Ch. 2, L. 1997; amd. Sec. 160, Ch. 42, L. 1997; amd. Sec. 1, Ch. 193, L. 1997; amd. Sec. 31, Ch. 472, L. 1997; amd. Sec. 1, Ch. 515, L. 1997; amd. Sec. 1, Ch. 179, L. 1999; amd. Sec. 1, Ch. 22, L. 2001; amd. Sec. 2, Ch. 71, L. 2001; amd. Sec. 1, Ch. 54, L. 2003; amd. Sec. 1, Ch. 83, L. 2003; amd. Sec. 13, Ch. 36, L. 2005; amd. Sec. 3, Ch. 12, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 12 in (1)(j) at end substituted "pursuant to 29 CFR 541.500" for "as defined in 29 CFR 541.5". Amendment effective October 1, 2011.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. (1) The provisions of this part are in addition to other provisions provided by law for the payment and collection of wages and salaries and are applicable to employees of the state of Montana, except that the penalty provisions of 39-3-206 do not apply to minimum wage and overtime claims that are subject to the Fair Labor Standards Act of 1938, in which case liquidated damages as determined under the Fair Labor Standards Act of 1938 apply.

(2) Sections 39-3-402 and 39-3-404 apply to an employee covered by the Fair Labor Standards Act of 1938 if state law provides a minimum wage that is higher than the minimum wage established under federal law.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307; amd. Sec. 2, Ch. 446, L. 1987; amd. Sec. 3, Ch. 71, L. 2001.

39-3-409. Adoption of minimum wage rates — exception. (1) The minimum wage, except as provided in subsection (3), must be the greater of either:

(a) the minimum hourly wage rate as provided under the federal Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), excluding the value of tips received by the employee and the special provisions for a training wage; or

(b) $6.15 an hour, excluding the value of tips received by the employee and the special provisions for a training wage.

(2) (a) The minimum wage is subject to a cost-of-living adjustment, as provided in subsection (2)(b).

(b) No later than September 30 of each year, an adjustment of the wage amount specified in subsection (1) must be made based upon the increase, if any, from August of the preceding year to August of the year in which the calculation is made in the consumer price index, U.S. city average, all urban consumers, for all items, as published by the bureau of labor statistics of the United States department of labor.

(c) The wage amount established under this subsection (2):

(i) must be rounded to the nearest 5 cents; and

(ii) becomes effective as the new minimum wage, replacing the dollar figure specified in subsection (1), on January 1 of the following year.

(3) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour.

History: En. Sec. 2, Ch. 674, L. 1989; amd. Sec. 1, Ch. 650, L. 1991; amd. Sec. 1, I.M. No. 151, approved Nov. 7, 2006.

39-3-410. Repealed. Sec. 2, Ch. 650, L. 1991.

History: En. Sec. 3, Ch. 674, L. 1989.

Part 5
Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except persons, firms, partnerships, or corporations that have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax lien sale certificate is not considered an encumbrance.

History: **En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979; amd. Sec. 28, Ch. 110, L. 2007.**

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: **(1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.**

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

39-3-503. Report of violations to county attorney by commissioner. Whenever it appears from reliable information satisfactory to the commissioner of labor and industry that a person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part has failed to pay any wages or salaries due the entity's employees as required by part 2 of this chapter, the commissioner may deliver the information to the county attorney of the county in which the operations of the employer are being carried on and may request the county attorney to file a complaint in the district court of the county in accordance with the provisions of part 2 of this chapter and this part.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1); amd. Sec. 1491, Ch. 56, L. 2009.**

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.**

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.**

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of part 2 of this chapter or this part have been violated and that the violation was willful or that the financial condition of the employer endangers employees in receiving prompt payment or collection of wages, the county attorney shall file a complaint in district court. All proceedings upon the complaint must be promptly prosecuted.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979; amd. Sec. 1492, Ch. 56, L. 2009.**

39-3-507. Prayer for relief. If the complaint described in 39-3-506 is filed by the county attorney upon the county attorney's own motion or at the request of the commissioner of labor and industry, the complaint must request that relief be had against the employer for greater security for the payment of salaries and wages of the employees.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 1493, Ch. 56, L. 2009.

39-3-508. Summons — service of process. (1) Upon the filing of the complaint described in 39-3-506, summons must issue and a copy of the complaint and a copy of the summons must be served upon the employer, who has 10 days after service to appear and defend the action.

(2) All orders and other process provided for in this part must be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon a partner or member of any firm is considered service upon each partner and each member of the firm. If the employer is a nonresident or a corporation without officers or directors within the county and cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or supervisor in charge of the work or, if there are none of these individuals, then posting a copy of the order or other process in a conspicuous place at or near the entrance to the principal workings is considered sufficient service.

History: (1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318; amd. Sec. 1494, Ch. 56, L. 2009.

Cross-References

Definitions and procedure for process and service, 25-3-101; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon the complaint described in 39-3-506, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring the employer to give bond for the payment of all wages and salaries then due and that accrue to the employer's employees within that county. Service of the order must be made at least 5 days before the date set for hearing or the date to which the hearing may be continued by the court upon good cause shown.

History: En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316; amd. Sec. 1495, Ch. 56, L. 2009.

39-3-510. Show cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

Cross-References

Injunctions, Title 27, ch. 19.

39-3-511. Bond requirements. (1) The bond referred to in 39-3-510 may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate located in the county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) The bond must be in the sum of not less than $500 for each unit of five individuals or less employed by the person, firm, partnership, or corporation.

(3) The bond must continue in force for 1 year.

(4) The bond must run in the name of the state of Montana and must be examined and approved by the judge of the district court, with approval endorsed on the bond.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part); amd. Sec. 1496, Ch. 56, L. 2009.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

39-3-512. Enjoining further operations if bond not filed. (1) If the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it considers the persons working for the employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any further operations of the employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court has been fully complied with.

(2) The county attorney of the county in which the proceedings are had or the attorney general of the state may file the action and prosecute the action.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part); amd. Sec. 1497, Ch. 56, L. 2009.

Cross-References

Injunctions, Title 27, ch. 19.

39-3-513. Costs of proceeding. The district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which must be taxed against the employer and paid to the clerk of the court to be deposited with the county treasurer to the credit of the general fund of the county.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part); amd. Sec. 1498, Ch. 56, L. 2009.

Cross-References

Costs, Title 25, ch. 10.

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.

Cross-References

Contempts, Title 3, ch. 1, part 5.

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.

39-3-516. Review of court order by supreme court. If an employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, the employer is entitled, upon payment for the transcript of record, to have the employer's objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323; amd. Sec. 1499, Ch. 56, L. 2009.

39-3-517. Suit on bond. A person whose wages or salary has remained unpaid for 15 days or more after due has a right to sue upon the bond described in this part for the recovery of the person's wages or salary.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part); amd. Sec. 1500, Ch. 56, L. 2009.

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-3-519. Clarification as to construction and applicability of part. (1) This part may not be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if the person or entity pays for all labor in full each day or if the labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) This part does not prohibit the making or entering into of any wage or working agreement, such as grubstake agreements or similar agreements, if the employer or contractor keeps in force proper workers' compensation insurance.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part); amd. Sec. 1501, Ch. 56, L. 2009.

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.

Cross-References

Civil remedies in general, Title 27.

Part 6
Restaurant, Bar, and Tavern Wage Protection Act
(Repealed)

39-3-601. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 366, L. 1983.

39-3-603. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004; amd. Sec. 2, Ch. 366, L. 1983; amd. Sec. 1, Ch. 546, L. 1989.

39-3-604. Repealed. Sec. 11, Ch. 90, L. 1995.

History: Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979; amd. Sec. 3, Ch. 366, L. 1983; amd. Sec. 2, Ch. 546, L. 1989; amd. Sec. 5, Ch. 490, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

39-3-605. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part); amd. Sec. 4, Ch. 366, L. 1983; amd. Sec. 3, Ch. 546, L. 1989; amd. Sec. 6, Ch. 490, L. 1991.

39-3-606. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008; amd. Sec. 5, Ch. 366, L. 1983.

39-3-608. Repealed. Sec. 11, Ch. 90, L. 1995.

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002; amd. Sec. 6, Ch. 366, L. 1983.

Part 7
Contractors' Bonds for Wages and Benefits
(Repealed)

39-3-701. Repealed. Sec. 14, Ch. 548, L. 1997.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

39-3-703. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3); amd. Sec. 27, Ch. 500, L. 1995.

39-3-704. Repealed. Sec. 31, Ch. 500, L. 1995.

History: En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).

39-3-705. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703; amd. Sec. 28, Ch. 500, L. 1995.

39-3-706. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2); amd. Sec. 29, Ch. 500, L. 1995.

CHAPTER 4
HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smelter workers.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments and school districts.
39-4-108. Repealed.
39-4-109. Cement plants and quarries.
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39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1
Hours of Labor — Penalties and Liability for Violations Thereof

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.
Classification of offenses, 45-1-201.
Misdemeanor defined, 45-2-101.

39-4-101. Hoisting engineers. (1) It is unlawful for a person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section applies only to plants that are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine in which the hoisting engine develops 15 or more horsepower or at or in any mine in which 15 or more individuals are employed underground in 24 hours of each day. However, the provisions of this section do not apply to a person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) A person or persons, company, or corporation that violates any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each day that the person or persons, company, or corporation continues to violate any of the provisions of this section is considered a separate and distinct offense and is punishable as a separate and distinct offense.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102; amd. Sec. 1502, Ch. 56, L. 2009.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of the time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision of a city, town, or county.

(3) The provisions of this section do not apply:

(a) when life is in danger or property is in imminent danger of destruction;

(b) in case of delay because of accident or impassable roads, abnormal road conditions, or snow blockades; or

(c) when mail for the drivers or attendants is delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which the individual is rightly employed.

(5) An employer or supervisor in charge of employees who requires a driver or attendant to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months, or both.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979; amd. Sec. 1503, Ch. 56, L. 2009.

39-4-103. Underground miners and smelter workers. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, may not exceed 8 hours a day unless the employer and employee agree to a workday of more than 8 hours:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals may not exceed 8 hours a day unless the employer and employee agree to a workday of more than 8 hours:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(3) A person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not more than 6 months, or both.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979; amd. Sec. 1504, Ch. 56, L. 2009; amd. Sec. 1, Ch. 212, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 212 in (1) after "other tunnels" substituted current text for "is 8 hours a day, except in cases of emergency when life and property are in imminent danger"; inserted (1)(a) and (1)(b) relating to collective bargaining and mutual agreement; in (2) after "ores or metals" substituted current text for "is 8 hours a day, except in cases of emergency when life or property is in imminent danger"; inserted (2)(a) and (2)(b) regarding collective bargaining and mutual agreement; in (3) near end substituted "not more than 6 months" for "not less than 1 month or more than 7 months"; and made minor changes in style. Amendment effective October 1, 2011.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" means the removal of the overburden and coal or other materials from the ground and all of the operations pertaining to the removal, without the necessity of providing timbers for holding the ground in place.

(2) The period of employment may not exceed 8 hours a day for employees working in strip mining unless the employer and employee agree to a workday of more than 8 hours:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a collective bargaining unit is not recognized.

(3) Any person, company, corporation, or lessee of a strip mine that violates the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not more than 6 months, or both. Each day that the person, company, corporation, or lessee continues to violate the provisions of this section must be considered a separate and distinct offense and be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112; amd. Sec. 2, Ch. 212, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 212 in (2) substituted current text for "A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger"; in (3) in first sentence near end substituted "not more than 6 months" for "not less than 30 days or more than 7 months"; and made minor changes in style. Amendment effective October 1, 2011.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

39-4-107. State and municipal governments and school districts. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, on all contracts let by them, and for all janitors, except in courthouses of counties having a taxable valuation of less than $10 million, engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee is opposed to working more than 8 hours.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a bargaining unit is not recognized.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983; amd. Sec. 1505, Ch. 56, L. 2009; amd. Sec. 30, Ch. 128, L. 2011; amd. Sec. 3, Ch. 212, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 128 in (1) in first sentence after "courthouses of" substituted "counties having a taxable valuation of less than $10 million" for "sixth- and seventh-class counties". Amendment effective July 1, 2011.

Chapter 212 in (1) deleted former second sentence that read: "A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal"; in (3) in second sentence at end substituted "is opposed to working more than 8 hours" for "prefers not to"; in (4)(b) after "mutual agreement" deleted "of the employer and employee"; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

Local government — office hours, 7-4-102.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

39-4-109. Cement plants and quarries. (1) (a) The period of employment may not exceed 8 hours a day for persons employed in or about cement plants and at quarries unless the employer and employee agree to a workday of more than 8 hours:

(i) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(ii) by mutual agreement when a collective bargaining unit is not recognized.

(b) Collective bargaining agreements covering cement plants and associated quarries that propose to extend the employment period beyond 8 hours a day must contain provisions that delineate the specific hours of work or other allowable situations agreed upon by the employer and the collective bargaining agent.

(2) Any person, corporation, agent, manager, or employer that violates a provision of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not more than 6 months, or both.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127; amd. Sec. 1, Ch. 281, L. 1985; amd. Sec. 4, Ch. 212, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 212 in (1) substituted current text for "A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries"; in (2) substituted "not more than 6 months" for "not less than 30 days or more than 7 months"; and made minor changes in style. Amendment effective October 1, 2011.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house supervisors.

(3) A person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months, or both.

History: En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979; amd. Sec. 1506, Ch. 56, L. 2009.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: (1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours constitutes a day's work and a period of not to exceed 48 hours constitutes a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in an exhibition, show, or contest may not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. The persons must have at least 12 consecutive hours off duty.

(2) The provisions of this section do not apply to a traveling circus or carnival that does not remain in any one county of the state for a period of more than 3 days and does not apply to a person working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or when a breakdown in machinery occurs or when life or property is in imminent danger.

(3) A person, corporation, agent, manager, employer, employee, contestant, or participant who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished for the first offense by a fine of not less than $50. For a second offense, the person or entity shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months, or both. For a third or subsequent offense, the person or entity shall be punished by a fine of $500 and by imprisonment in the county jail for a term of 6 months. Each day's violation of this section constitutes a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134; amd. Sec. 1507, Ch. 56, L. 2009.

CHAPTER 5
THE EMPLOYMENT AGENCY ACT
(Repealed)

Part 1 — General Provisions
(Repealed)

Part 2 — Licensing
(Repealed)

Part 3 — Contracts, Fees, and General Operation of Business
(Repealed)

Part 4 — Investigations and Enforcement
(Repealed)

Part 1
General Provisions
(Repealed)

39-5-101. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.

39-5-102. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981; amd. Sec. 1, Ch. 483, L. 1987.

39-5-103. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1); amd. Sec. 4, Ch. 483, L. 1987.

39-5-104. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2
Licensing
(Repealed)

39-5-201. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

39-5-202. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

39-5-203. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429; amd. Sec. 4, Ch. 483, L. 1987.

39-5-204. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430; amd. Sec. 4, Ch. 483, L. 1987.

39-5-205. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3); amd. Sec. 5, Ch. 483, L. 1987.

39-5-206. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425; amd. Sec. 4, Ch. 483, L. 1987.

39-5-207. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).

39-5-208. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.

39-5-209. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428; amd. Sec. 4, Ch. 483, L. 1987.

Part 3
Contracts, Fees, and General Operation of Business
(Repealed)

39-5-301. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part); amd. Sec. 4, Ch. 483, L. 1987.

39-5-302. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.

39-5-303. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981; amd. Sec. 1, Ch. 339, L. 1983; amd. Sec. 4, Ch. 483, L. 1987.

39-5-304. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).

39-5-305. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).

39-5-306. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

39-5-307. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.

39-5-308. Repealed. Sec. 128, Ch. 429, L. 1995.
History: (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2); amd. Sec. 2, Ch. 483, L. 1987.

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.
History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.

39-5-311. Repealed. Sec. 128, Ch. 429, L. 1995.
History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981; amd. Sec. 4, Ch. 483, L. 1987.

39-5-312. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Part 4
Investigations and Enforcement (Repealed)

39-5-401. Repealed. Sec. 128, Ch. 429, L. 1995.
History: (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3); amd. Sec. 3, Ch. 483, L. 1987.

39-5-402. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1; amd. Sec. 5, Ch. 483, L. 1987.

39-5-403. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

39-5-404. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

39-5-405. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.

39-5-406. Repealed. Sec. 128, Ch. 429, L. 1995.
History: En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.

CHAPTER 6
APPRENTICESHIP

Part 1 — General Provisions

39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.
39-6-108. Apprentice wage rate.

Part 1
General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register apprenticeship agreements that are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, taking into consideration performance of the agreement, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements;

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) use the standard prevailing wage rate for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411 as a base on which an apprenticeship wage is calculated pursuant to 39-6-108 for apprentices;

(h) adopt rules necessary to carry out the intent and purposes of this chapter; and

(i) perform other duties that may be required by federal regulations, provided that the federal regulations are not in conflict with this chapter.

(2) Not less often than once every 2 years, the department shall make a report of its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public.

History: Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979; amd. Sec. 33, Ch. 112, L. 1991; amd. Sec. 3, Ch. 538, L. 2005.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

Cross-References

Management of federal funds, Title 17, ch. 3, part 1.

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

Cross-References

Regulation of vocational education, Title 20, ch. 7, part 3.

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements must contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice using the criteria established in 39-6-108;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any participating party. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be used for consultation regarding the settlement of differences arising out of the apprenticeship agreement if the differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that, if an employer is unable to fulfill an obligation under the apprenticeship agreement, the employer may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department shall continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which the apprentice is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979; amd. Sec. 4, Ch. 538, L. 2005.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

39-6-108. Apprentice wage rate. (1) Except as provided in subsection (3), a wage paid to an apprentice employed for construction services, as defined in 18-2-401, under Title 18, chapter 2, part 4, must:

(a) be based on the standard prevailing rate of wages for construction services, as defined in 18-2-401, for a prevailing wage rate district as provided in 18-2-411; and

(b) increase progressively to no more than the employer's lowest journeyman hourly wage from a starting wage of no less than 40% of the hourly wage paid to a journeyman in the same craft and working in the same area or region. A higher wage must be paid if required by federal law, by other state law, or by contract. If the apprentice performs labor in more than one locality, the apprentice must be paid based on the progressive wage schedule for the journeyman wage rate in the area in which the apprentice is working.

(2) The wage does not include a travel allowance or benefits. Benefits must be paid to an apprentice if work is being performed on a project that is covered by requirements to pay the Montana prevailing wage or a project covered by the federal Davis-Bacon Act, pursuant to 29 CFR, parts 1, 3, and 5.

(3) Wages paid under an individual's written apprenticeship agreement registered with the department of labor and industry as of October 1, 2006, are excluded from the rate set in subsection (1).

(4) For purposes of this section, "apprentice" means a worker employed to learn a skilled trade under a written apprenticeship agreement registered with the department of labor and industry.

History: En. Sec. 1, Ch. 538, L. 2005.

CHAPTER 7
WOMEN IN EMPLOYMENT
DISPLACED HOMEMAKERS

Part 1 — Duties of Department of Labor and Industry

39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission for human rights.

Part 2 — Maternity Leave
(Renumbered and Repealed)

Part 3 — Displaced Homemakers

39-7-301. Short title.
39-7-302. Purpose.
39-7-303. Definitions.
39-7-304. Multipurpose service programs for displaced homemakers — administrators.
39-7-305. Programs to aid displaced homemakers.
39-7-306. Rulemaking duties of commissioner.
39-7-307. Acceptance of funds by administrator of local program.
39-7-308. Evaluation of multipurpose service programs — reports to the commissioner.
39-7-309. Staff of service programs.
39-7-310. Partial funding from local community.

Parts 4 and 5 reserved

Part 6 — Incentive Program—Child Care Assistance
(Repealed)

Part 1
Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.

39-7-104. Department to work in close cooperation with commission for human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission for human rights.

History: En. Sec. 2, Ch. 478, L. 1975.

Cross-References

Commission for Human Rights, 2-15-1706; Title 49, ch. 2, part 2.

Part 2
Maternity Leave
(Renumbered and Repealed)

39-7-201. Repealed. Sec. 3, Ch. 285, L. 1983.

History: En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. Repealed. Sec. 3, Ch. 285, L. 1983.

History: En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-203. Renumbered 49-2-310. Sec. 2, Ch. 285, L. 1983.

39-7-204. Renumbered 49-2-311. Sec. 2, Ch. 285, L. 1983.

39-7-205. Repealed. Sec. 3, Ch. 285, L. 1983.

History: En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. Repealed. Sec. 3, Ch. 285, L. 1983.
History: En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. Repealed. Sec. 3, Ch. 285, L. 1983.
History: En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. Repealed. Sec. 3, Ch. 285, L. 1983.
History: En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. Repealed. Sec. 3, Ch. 285, L. 1983.
History: En. Sec. 1, Ch. 286, L. 1979.

Part 3
Displaced Homemakers

39-7-301. Short title. This part may be cited as the "Displaced Homemaker Act".
History: En. Sec. 1, Ch. 709, L. 1983.

39-7-302. Purpose. It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.
History: En. Sec. 2, Ch. 709, L. 1983.

Cross-References
Comparable worth law, 2-18-208, 2-18-209.
Equal pay for equal work, 39-3-104.
Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Adult" means a person who is 18 years of age or older.

(2) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(3) "Displaced homemaker" means an adult who:

(a) has worked as an adult primarily without remuneration to care for the home and family and for that reason has diminished marketable skills and who has been dependent on public assistance or on the income of a relative but is no longer supported by that income; or

(b) (i) is a parent whose youngest dependent child will become ineligible to receive financial assistance, as defined in 53-4-201, pursuant to Title 53, chapter 4, part 2, within 2 years of the parent's application for displaced homemaker assistance;

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iii) meets the qualifications described in subsection (3)(a) or (3)(b) and is a criminal offender.
History: En. Sec. 3, Ch. 709, L. 1983; amd. Sec. 1, Ch. 127, L. 1995; amd. Sec. 2, Ch. 486, L. 1997; amd. Sec. 2, Ch. 465, L. 2001.

Cross-References
Termination of marriage — support and maintenance, Title 40, ch. 4.

39-7-304. Multipurpose service programs for displaced homemakers — administrators. (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in 39-7-305.

(2) The commissioner shall contract with an administrator for each program.
History: En. Sec. 4, Ch. 709, L. 1983.

39-7-305. Programs to aid displaced homemakers. (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

History: En. Sec. 5, Ch. 709, L. 1983.

39-7-306. Rulemaking duties of commissioner. The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in 39-7-304; and

(4) necessary to carry out the provisions of this part.

History: En. Sec. 6, Ch. 709, L. 1983.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-307. Acceptance of funds by administrator of local program. The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of this part. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

History: En. Sec. 7, Ch. 709, L. 1983.

39-7-308. Evaluation of multipurpose service programs — reports to the commissioner. The administrator of each designated program established under this part shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

History: En. Sec. 8, Ch. 709, L. 1983.

39-7-309. Staff of service programs. To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

History: En. Sec. 9, Ch. 709, L. 1983.

39-7-310. Partial funding from local community. Fifteen percent of the operational costs of a local displaced homemaker program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 10, Ch. 709, L. 1983.

Parts 4 and 5 reserved

Part 6
Incentive Program — Child Care Assistance
(Repealed)

39-7-601. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.

History: En. Sec. 1, Ch. 579, L. 1987.

39-7-602. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.
History: En. Sec. 3, Ch. 579, L. 1987.

39-7-603. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.
History: En. Sec. 7, Ch. 579, L. 1987; amd. Sec. 1, Ch. 251, L. 1989.

39-7-604. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.
History: En. Sec. 4, Ch. 579, L. 1987; amd. Sec. 2, Ch. 251, L. 1989.

39-7-605. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.
History: En. Sec. 5, Ch. 579, L. 1987; amd. Sec. 3, Ch. 251, L. 1989.

39-7-606. Repealed. Sec. 315, Ch. 42, L. 1997; Sec. 51, Ch. 486, L. 1997.
History: En. Sec. 6, Ch. 579, L. 1987; amd. Sec. 4, Ch. 251, L. 1989.

CHAPTER 8
PROFESSIONAL EMPLOYER ORGANIZATIONS AND GROUPS LICENSING

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Part 1
General Provisions

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Requirement of employers to pay unemployment and workers' compensation taxes, 39-51-1103.

39-8-101. Short title — purpose. (1) This chapter may be cited as the "Montana Professional Employer Organizations and Groups Licensing Act".

(2) The legislature recognizes that there is a public need for professional employer services and finds it necessary in the interest of public health, safety, and welfare to establish standards for the operation, regulation, and licensing of professional employer organizations and groups in this state.

History: En. Sec. 1, Ch. 344, L. 1995.

39-8-102. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

(1) "Applicant" means a person that seeks to be licensed under this chapter.

(2) "Client" means a person that obtains all or part of the person's workforce from another person through a professional employer arrangement.

(3) "Controlling person" means an individual who possesses the right to direct the management or policies of a professional employer organization or group through ownership of voting securities, by contract or otherwise.

(4) "Department" means the department of labor and industry.

(5) "Employee leasing arrangement" means an arrangement by contract or otherwise under which a professional employer organization hires its own employees and assigns the employees to work for another person to staff and manage, or to assist in staffing and managing, a facility, function, project, or enterprise on an ongoing basis.

(6) "Financial statements" means accounting information, consisting of balance sheets and income statements, that identifies the financial position of applicants or licensees through their operations.

(7) "Licensee" means a person licensed as a professional employer organization or group under this chapter.

(8) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.

(9) (a) "Professional employer arrangement" means an arrangement by contract or otherwise under which:

(i) a professional employer organization or group assigns employees to perform services for a client;

(ii) the arrangement is or is intended to be ongoing rather than temporary in nature; and

(iii) the employer responsibilities are shared by the professional employer organization or group and the client.

(b) The term does not include:

(i) services performed by a temporary service contractor;

(ii) arrangements under which a person shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended, if:

(A) that person's principal business activity is not entering into professional employer arrangements; and

(B) that person does not represent to the public that the person is a professional employer organization or group;

(iii) arrangements existing for employment of an independent contractor working under an independent contractor exemption certificate provided for in 39-71-417; and

(iv) arrangements by a health care facility, as defined in 50-5-101, to provide its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(10) "Professional employer group" or "group" means at least two but not more than five professional employer organizations, each of which is majority-owned by the same person.

(11) (a) "Professional employer organization" means:

(i) a person that provides services of employees pursuant to one or more professional employer arrangements or to one or more employee leasing arrangements; or

(ii) a person that represents to the public that the person provides services pursuant to a professional employer arrangement.

(b) The term does not include a health care facility, as defined in 50-5-101, that provides its own employees to perform services at and on behalf of another health care facility or at and on behalf of a private office of physicians, dentists, or other physical or mental health care workers licensed and regulated under Title 37.

(12) "Temporary service contractor" means a person conducting a business that hires the person's own employees and assigns them to clients to fulfill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

History: En. Sec. 2, Ch. 344, L. 1995; amd. Sec. 1, Ch. 149, L. 2003; amd. Sec. 1, Ch. 260, L. 2005; amd. Sec. 4, Ch. 448, L. 2005.

Part 2
Licensing

39-8-201. License required — exemption — rulemaking authority. (1) On or after July 1, 1995, a person who acts as a professional employer organization or group by entering into a professional employer arrangement or an employee leasing arrangement with a client in this state without a license or who violates the provisions of this chapter may be subject to the penalties provided in 39-8-302.

(2) The provisions of this chapter do not apply to a labor organization, the state or its political subdivisions, the United States, or any programs or agencies of those entities.

(3) A license issued under this chapter remains the property of the department and may not be transferred.

(4) The department may adopt rules to implement the provisions of this chapter.

History: En. Sec. 3, Ch. 344, L. 1995.

39-8-202. Initial license application — application fee — standards — provisional license. (1) An applicant for initial licensure as a professional employer organization or group shall file with the department a completed application on a form provided by the department.

(2) The application must be accompanied by a nonrefundable application fee and any material or information required by the department that demonstrates compliance with the requirements of this chapter. The application fee is:

(a) $750 for a resident or nonresident unrestricted license; and

(b) $500 for a restricted license.

(3) As a condition of licensure under this chapter, an applicant who is not a resident or who is domiciled outside the state must first be licensed as a professional employer organization or group in the state in which the applicant is a resident or is domiciled if licensing is required by that state.

(4) An applicant for licensure as a professional employer organization or group must meet one of the following applicable standards:

(a) An individual must be 18 years of age or older.

(b) A partnership or a limited partnership shall provide the names and home addresses of all partners, indicate whether each partner is a general or a limited partner, and include a copy of the partnership agreement or an affidavit signed by all partners acknowledging that a written partnership agreement does not exist.

(c) A corporation shall state the names and home addresses of all officers, directors, and shareholders who own a 5% or greater interest in the corporation. A domestic or foreign corporation must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.

(d) A limited liability company shall state the names and home addresses of those individuals who own a 5% or greater interest in the limited liability company. A domestic or foreign limited liability company must have filed any required documents with the secretary of state and shall remain in good standing to conduct business pursuant to this chapter.

(e) A group:

(i) must be authorized to act on behalf of the group;

(ii) shall include for each professional employer organization within the group the information required in subsection (4); and

(iii) shall guarantee, on a form provided by the department and executed by each professional employer organization within the group, payment of all financial obligations with respect to wages, payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

(5) (a) An applicant shall also provide:

(i) the trade name or names under which the applicant conducts business, the business's taxpayer or employer identification number, the address of the business's principal place of business in the state, and the addresses of any other offices within the state through which the applicant intends to conduct business as a professional employer organization or group. If the applicant's principal place of business is located in another state, the address must be provided.

(ii) a list by jurisdiction of each name under which the applicant has operated in the preceding 5 years, including any alternative names, names of predecessors, and names of related business entities with common majority ownership, and detailed information on the background of each controlling person to the extent required by the department; and

(iii) other information requested by the department to show that the applicant and each controlling person are of good moral character, have business integrity, and are financially responsible. "Good moral character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair dealings; and respect for the rights of others and for the laws of this state and nation.

(b) (i) As a prerequisite to the issuance of a license, the department shall require the applicant and any controlling person to submit fingerprints for the purpose of fingerprint checks by the Montana department of justice and the federal bureau of investigation.

(ii) The applicant and any controlling person shall sign a release of information to the department and are responsible to the department of justice for the payment of all fees associated with the criminal background check.

(iii) Upon completion of the criminal background check, the department of justice shall forward all criminal justice information, as defined in 44-5-103, concerning the applicant or any controlling person that involves the conviction of a criminal offense in any jurisdiction to the department, as authorized in 44-5-303.

(iv) At the conclusion of any background check required by this section, the department must receive the criminal background check report but may not receive the fingerprint card of the applicant or of any controlling person. Upon receipt of the criminal background check report, the department of justice shall promptly destroy the fingerprint card of the applicant and of any controlling person.

(c) If an applicant or any controlling person has a history of criminal convictions, then pursuant to 37-1-203, the applicant or controlling person has the opportunity to demonstrate to the department that the applicant or controlling person is sufficiently rehabilitated to warrant the public trust, and if the department determines that the applicant or controlling person is not, the license may be denied.

(6) (a) Except for an applicant who is granted a restricted license under subsection (9), an applicant shall maintain a tangible accounting net worth of not less than $50,000, evidenced by:

(i) providing financial statements that have been independently audited by a certified public accountant in accordance with generally accepted accounting principles; or

(ii) providing independently compiled financial statements and a $100,000 security deposit in a form that is acceptable to the department.

(b) If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the security deposit may be used to meet those obligations. The security deposit may not be used in determining the net worth of an applicant.

(c) (i) Documents submitted to establish net worth must reflect net worth as of a date not more than 6 months prior to the date on which the application is submitted.

(ii) Financial statements submitted must be attested by the president, chief financial officer, and at least one controlling person of the professional employer organization or group.

(iii) If an applicant is unable to meet the $50,000 net worth requirement, the applicant shall provide to the department a surety bond, a letter of credit, or marketable securities acceptable to the department in an amount of not less than $50,000 to cover the deficiency. If, after licensure, an applicant defaults in paying wages or payroll-related taxes or in meeting any liability arising pursuant to Title 39, chapter 71, or this chapter, the surety bond, letter of credit, or marketable securities provided to the department may be used to meet those obligations.

(7) The applicant shall maintain a positive working capital, as evidenced by financial statements.

(8) The department may provide by rule for the acceptance, in lieu of the requirements of subsections (6) and (7), of an affidavit provided by a bonded, independent, and qualified assurance organization that has been approved by the department certifying the qualifications of a professional employer organization or group seeking licensure under this chapter.

(9) The department may issue a restricted license for limited operation within this state to a professional employer organization or group that is a resident of or domiciled in another state if:

(a) the applicant's state of residence or domicile provides for licensing of professional employer organizations or groups and the applicant is licensed and in good standing in that state and that state grants a similar privilege for restricted licensing to professional employer organizations or groups that are residents of or domiciled in this state and that are licensed under this chapter;

(b) the applicant does not maintain an office, a sales force, or a sales representative in this state and does not solicit clients who are residents of or domiciled in this state; and

(c) the applicant does not have more than 100 leased employees working in this state.

(10) An applicant for a license shall appoint a recognized and approved entity as its registered agent to receive service of legal process issued against it in this state if a registered agent has not already been appointed.

(11) The department may issue a provisional license to an applicant that allows the applicant to operate in this state while the applicant's application is being processed by the department. The department may not charge a fee for a provisional license. The department may adopt rules to implement the provisions of this subsection.

(12) A license issued under 39-8-204 or this section may not be transferred.

History: En. Sec. 4, Ch. 344, L. 1995; amd. Sec. 2, Ch. 260, L. 2005; amd. Sec. 41, Ch. 416, L. 2005; amd. Sec. 1, Ch. 15, L. 2007; amd. Sec. 4, Ch. 112, L. 2009.

39-8-203. Denial of license application or renewal — hearing. (1) The department shall deny a license application or an application to renew a license if:

(a) the application is not fully completed or properly executed;

(b) documents required to supplement the application are not included in the application packet or are inadequate;

(c) the nonrefundable application or license fee is not submitted or is incorrectly submitted with the application packet;

(d) the applicant or any person named in the application misrepresents material in the application;

(e) the applicant is determined by the department to lack good moral character, business integrity, or financial responsibility; or

(f) the department determines that the applicant has failed to meet or maintain any requirement of this chapter.

(2) Conviction of a crime within the last 7 years does not automatically bar an applicant from obtaining a license or bar a licensee from renewing a license. The department shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction, and any other factor considered relevant by the department.

(3) The department or its agent shall furnish the applicant with a written statement of the reason or reasons for denying the license or license renewal application.

(4) An applicant or licensee may request a hearing before the department within 30 days after receiving the written denial statement. The hearing and appeal must follow the procedures provided in Title 2, chapter 4, parts 6 and 7.

(5) During the hearing and appeal process, a licensee may continue to operate unless the circumstances warrant the ordering of immediate cessation of operations. If the renewal application is rejected, the licensee shall cease operations within this state 30 days after receiving written notification. A licensee who does not comply with the department's order to cease is subject to the penalties provided in 39-8-302.

(6) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation of an order to cease occurs, an action for an injunction, order, or other civil remedy in district court to enforce its order.

(7) An applicant or licensee is ineligible to reapply for a license for 1 year following final department action denying the issuance of or renewal of a license. The 1-year restriction does not apply to an administrative denial or nonrenewal if the denial or nonrenewal was caused:

(a) by an inadvertent error or omission on the application;

(b) by experience that was insufficiently documented to the department at the time of the previous application;

(c) by a failure to submit the required fees; or

(d) when the applicant or licensee was determined to be ineligible because an individual no longer associated with the professional employer organization or group was determined to lack good moral character, business integrity, or financial responsibility.

History: En. Sec. 5, Ch. 344, L. 1995.

39-8-204. License renewal. (1) A license issued under this chapter is valid for 1 year from the date of issuance unless suspended or revoked.

(2) An applicant for license renewal is subject to the requirements of 39-8-202(3) through (11).

(3) At least 30 days prior to the expiration of the license, the licensee shall submit an application for renewal of a license on a form prescribed by the department and accompanied by the license fee, as provided in 39-8-205.

(4) A late renewal application may not be processed prior to the expiration of the licensee's current license. A person engaged in an unlicensed activity is subject to the penalty established in 39-8-302.

(5) Denial of a renewal license is subject to review under the provisions of 39-8-203.

History: En. Sec. 6, Ch. 344, L. 1995; amd. Sec. 3, Ch. 260, L. 2005.

39-8-205. Renewal fees. (1) The fee for the renewal of a resident or nonresident unrestricted license is $750.

(2) The fee for the renewal of a restricted license is $500.

(3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted license.

(4) Fees collected must be used by the department to implement this chapter.

History: En. Sec. 7, Ch. 344, L. 1995; amd. Sec. 2, Ch. 15, L. 2007.

39-8-206. License suspension, revocation, or nonrenewal. (1) In addition to the penalty provided in 39-8-302, the department may suspend for up to 1 year, may permanently revoke, or may refuse to renew a license issued under this chapter if, after notice to the licensee, the department finds that any of the following exists:

(a) a cause for which issuance of the license could have been refused had it been known to the department at the time of issuance;

(b) a violation of an order of the department or noncompliance with any provision of this chapter;

(c) procurement of or attempting to procure a license through misrepresentation or fraud;

(d) failure to provide a written response to a written inquiry from the department or its agent within 30 days after receiving an inquiry; or

(e) failure to meet or maintain any other requirement of this chapter.

(2) If a license is suspended, revoked, or not renewed, the department shall:

(a) immediately notify by certified mail the licensee and the licensee's workers' compensation carrier; and

(b) require the licensee to:

(i) notify each client by certified mail, return receipt requested, of the suspension, revocation, or nonrenewal using language furnished by the department;

(ii) notify each client in writing that the client shares joint and several liability, retroactive to the date of the client's entering into a contract with the licensee, for any wages, workers' compensation premiums, payroll-related taxes, and any benefits left unpaid by the professional employer organization or group; and

(iii) provide the department with evidence of client notification.

(3) Upon notification, the licensee may appeal the decision of the department pursuant to the procedure provided in 39-8-203.

History: En. Sec. 8, Ch. 344, L. 1995; amd. Sec. 4, Ch. 260, L. 2005.

39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter. The department, by rule, may waive the requirements of this subsection (2)(b) if the licensee provides to the department an affidavit from an organization of the type specified in 39-8-202(8).

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating a professional employer arrangement or employee leasing arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) (a) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(b) When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of Montana workers' compensation coverage for the professional employer organization or group.

(5) A professional employer organization or group is an employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements. This section does not preclude the client from providing benefits to employees coemployed by a professional organization or group.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

(9) A professional employer organization or group that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515.

History: En. Sec. 9, Ch. 344, L. 1995; amd. Sec. 161, Ch. 42, L. 1997; amd. Sec. 62, Ch. 472, L. 1999; amd. Sec. 5, Ch. 260, L. 2005; amd. Sec. 3, Ch. 15, L. 2007.

Part 3
Disciplinary Provisions

39-8-301. Deceptive practices prohibited. A professional employer organization or group may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated an estimate, illustration, circular, statement, advertisement, sales presentation, omission, or comparison that misrepresents the benefits, advantages, conditions, or terms of a professional employer arrangement or that is otherwise untrue, deceptive, or misleading;

(2) enter into an agreement to commit or by concerted action commit an act of boycott, coercion, or intimidation that results in unreasonable restraint of or monopoly in the business of professional employer services;

(3) file with the department or other public official or make, publish, disseminate, circulate, or deliver to a person a false statement of financial condition with the intent to deceive;

(4) knowingly:

(a) make a false entry of a material fact in a book, report, or statement of a person; or

(b) omit a material fact pertaining to the business of the person from a book, report, or statement of that person;

(5) permit the use or filing of a name, trade name, fictitious name, or business identity that is the same as or similar to or that may be confused with the name, trade name, fictitious name, or business identity of an existing licensee, governmental agency, or nonprofit organization; or

(6) commit any other practice determined by department rule to be deceptive.

History: En. Sec. 10, Ch. 344, L. 1995.

39-8-302. Disciplinary action against licensee — penalties. (1) The department may deny a license application or may suspend, revoke, or refuse to renew an existing license for a person who:

(a) obtains or renews a license through bribery, fraud, or willful misrepresentation;

(b) engages in fraud, deceit, misrepresentation, or misconduct in:

(i) obtaining or providing workers' compensation or health coverage;

(ii) the classification of employees;

(iii) the reporting of employee wages for purposes of any payroll-related taxes or workers' compensation benefits; or

(iv) the operation of a professional employer organization or group;

(c) conducts business without a valid license;

(d) fails to maintain evidence of workers' compensation insurance coverage;

(e) transfers or attempts to transfer a license issued pursuant to this chapter; or

(f) violates the provisions of this chapter or a rule issued pursuant to this chapter.

(2) A person who fails to comply with the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to $1,000, imprisonment for not more than 1 year, or both.

History: En. Sec. 11, Ch. 344, L. 1995; amd. Sec. 6, Ch. 260, L. 2005.

39-8-303. Practice without license — investigation of complaint — injunction. (1) The department shall investigate complaints concerning practice by an unlicensed person of activities for which a license is required under this chapter.

(2) The department may file an action to enjoin a person from practicing without a license as a professional employer organization or group.

History: En. Sec. 12, Ch. 344, L. 1995.

39-8-304. Violation of injunction — penalty. A person who violates an injunction issued under 39-8-303 shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 13, Ch. 344, L. 1995.

39-8-305. Investigations — audits — reviews. (1) The department or its agent may perform an investigation, audit, or review necessary to determine whether a person has violated any provision of this chapter or any rule promulgated by the department to implement this chapter.

(2) Except as provided in subsection (3), material compiled by the department or its agent in an investigation, audit, or review pursuant to this section is a public record and may be disclosed.

(3) Financial information, client lists, and lists of workers that are assigned by a professional employer organization or group and that are obtained by the department or its agent during an investigation, audit, or review are confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties.

History: En. Sec. 14, Ch. 344, L. 1995.

Part 4
Confidentiality — Applicability of Other Law

39-8-401. Disclosure of information. (1) The department may not disclose to any person the records, statements, or documents received from an applicant, client, or professional employer organization or group, except:

(a) information necessary for public employees in the performance of their public duties; or

(b) in response to an order received by a court of competent jurisdiction upon a finding that the disclosure of the record, statement, or document is necessary because the merits of disclosure clearly exceed the demand for individual privacy.

(2) The department may publish or make available to the public reasonable statistical data or reports regarding professional employer organizations or groups if the data or reports protect the identity of an applicant, client, or professional employer organization or group.

History: En. Sec. 15, Ch. 344, L. 1995.

39-8-402. Other law. (1) This chapter does not exempt a client of a professional employer organization or group or an employee assigned to a client by a professional employer organization or group from other local, state, or federal license or registration requirements.

(2) An employee who is licensed, registered, or certified under law and who is assigned to a client location is an employee of the client for purposes of the license, registration, or certification.

(3) Except as provided in a professional employer arrangement, a professional employer organization or group is not liable for the general debts, obligations, profit losses, business goodwill, or other damages of a client with which it has entered into a professional employer arrangement.

History: En. Sec. 16, Ch. 344, L. 1995.

39-8-403. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a professional employer organization shall base classifications and rates applicable to the payroll of a worker who is subject to either a professional employer arrangement or an employee leasing arrangement as though the worker has been a direct employee of the client employer. If an experience modification has been established for the client employer, that experience modification must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for the client employer's workers.

(2) The insurer of a professional employer organization shall report to the workers' compensation advisory or rating organization of which the insurer is required to be a member under Title 33, chapter 16, part 10, all data by client, including payroll by classification and liabilities for each client during the term of the policy.

(3) An insurer shall audit policies issued to a professional employer organization within 90 days of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to determine whether all classifications, experience modification factors, and estimated payroll used with respect to the development of the premium charged are appropriate.

(4) All operations of a client, whether or not all or a portion of the client's operations are subject to a professional employer arrangement or employee leasing arrangement, must be insured by the same insurer.

History: En. Sec. 17, Ch. 344, L. 1995.

CHAPTER 9
CONTRACTOR REGISTRATION

Part 1 — General Provisions

39-9-101. Purpose.
39-9-102. Definitions.
39-9-103. Rulemaking authority.

Part 2 — Registration

39-9-201. Registration required — application.
39-9-202. Repealed.
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39-9-204. Certificate of registration — issuance — duration .
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39-9-206. Fees — education program.
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39-9-301. Business practices — penalty.
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Part 4 — Infractions—Penalties

39-9-401. Violation — infraction — penalty — disposition.
39-9-402. Repealed.
39-9-403. Repealed.
39-9-404. Repealed.
39-9-405. Repealed.
39-9-406. Repealed.

39-9-407. Repealed.
39-9-408. Repealed.
39-9-409. Repealed.
39-9-410. Repealed.

Part 1
General Provisions

Part Cross-References
Independent contractor certification, 39-71-417.

39-9-101. Purpose. It is the purpose of this chapter to ensure that all construction contractors are competing fairly and in compliance with state laws.
History: En. Sec. 1, Ch. 500, L. 1995; amd. Sec. 1, Ch. 548, L. 1997.

39-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Construction contractor" means a person, firm, or corporation that:

(a) in the pursuit of an independent business, offers to undertake, undertakes, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish for another a building, highway, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works, or the installation or repair of roofing or siding; or

(b) in order to do work similar to that described in subsection (1)(a) upon the construction contractor's property, employs members of more than one trade on a single job or under a single building permit, except as otherwise provided.

(2) "Department" means the department of labor and industry.
History: En. Sec. 2, Ch. 500, L. 1995; amd. Sec. 2, Ch. 548, L. 1997.

39-9-103. Rulemaking authority. The department may adopt rules to implement this chapter.
History: En. Sec. 25, Ch. 500, L. 1995.

Part 2
Registration

39-9-201. Registration required — application. (1) Each construction contractor shall register with the department.

(2) An applicant for registration as a construction contractor shall submit an application on a form to be provided by the department that must include the following information:

(a) the applicant's social security number;
(b) proof of compliance with workers' compensation laws;
(c) the I.R.S. employer identification number, if any; and
(d) the name and address of:
(i) each partner if the applicant is a firm or partnership;
(ii) the owner if the applicant is an individual proprietorship;
(iii) the corporate officers and registered agent if the applicant is a corporation; or
(iv) the manager of a manager-managed limited liability company or the members of a member-managed limited liability company and the registered agent if the applicant is a limited liability company.
History: En. Sec. 3, Ch. 500, L. 1995; amd. Sec. 3, Ch. 548, L. 1997; amd. Sec. 1, Ch. 133, L. 2005.

39-9-202. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 4, Ch. 500, L. 1995.

39-9-203. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 5, Ch. 500, L. 1995.

39-9-204. Certificate of registration — issuance — duration. (1) The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) The department shall place the expiration date on the certificate. The certificate is valid for 2 years.

History: **En. Sec. 6, Ch. 500, L. 1995; amd. Sec. 4, Ch. 548, L. 1997.**

39-9-205. When partnership or joint venture considered registered. A partnership or joint venture is considered registered under this chapter if one of the general partners or venturers whose name under which the partnership or venture does business is registered.

History: **En. Sec. 7, Ch. 500, L. 1995.**

39-9-206. Fees — education program. (1) The department shall charge fees for:

(a) issuance, renewal, and reinstatement of certificates of registration; and

(b) change of name, address, or business structure.

(2) The department shall set the fees by administrative rule. The fees must cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs include reproduction, travel, per diem, and administrative and legal support costs.

(3) The fees charged in subsection (1)(a) may not exceed:

(a) $70 for the initial registration certificate; or

(b) $70 for the renewal or reinstatement of a registration certificate.

(4) The fees collected under this section must be deposited in the state special revenue fund in an account to the credit of the department for the administration and enforcement of this chapter and independent contractor certification provided for in Title 39, chapter 71, part 4.

(5) The department shall establish, cooperatively with representatives of the building industry, an industry and consumer information program, funded with 15% of the fees, to educate the building industry about the registration program and to educate the public regarding the hiring of building construction contractors.

(6) The fee for a joint application for a certificate of registration and an independent contractor exemption certificate may not exceed the total fee charged for a certificate of registration and an independent contractor exemption certificate that are obtained separately. The fee paid for the independent contractor exemption certificate may be used by the department to offset the cost of administering independent contractor certification provided for in Title 39, chapter 71, part 4.

History: **En. Sec. 8, Ch. 500, L. 1995; amd. Sec. 5, Ch. 548, L. 1997; amd. Sec. 2, Ch. 133, L. 2005.**

39-9-207. Contractor registration — limiting liability. A person who, pursuant to an oral or written contract, engages a construction contractor who is registered under this chapter on the date of the contract is not liable as an employer for workers' compensation coverage under 39-71-405, for unemployment insurance coverage, or for wages and fringe benefits for:

(1) the registered construction contractor;

(2) the employees of the registered construction contractor; or

(3) any subsequent subcontractor or the employees of any subsequent subcontractor engaged to fulfill a part of or all of the obligations of the oral or written contract of the registered construction contractor listed in subsection (1).

History: **En. Sec. 9, Ch. 500, L. 1995; amd. Sec. 6, Ch. 548, L. 1997.**

39-9-208 through 39-9-210 reserved.

39-9-211. Exemptions. This chapter does not apply:

(1) to an authorized representative of the United States government, the state of Montana, or any incorporated municipality, county, alternative form of local government, irrigation district, reclamation district, or other municipal or political corporation or subdivision of this state;

(2) to an officer of a court acting within the scope of office;

(3) to a public utility operating under the regulations of the public service commission or to a rural cooperative utility operating under Title 35, chapter 18, in construction, maintenance, or development work incidental to its own business;

(4) to the repair or operation incidental to the discovery or production of oil or gas or incidental to the drilling, testing, abandoning, or other operation of an oil or gas well or a surface or underground mine or mineral deposit;

(5) to the sale or installation of finished products, materials, or articles of merchandise that are not actually fabricated into and do not become a permanent fixed part of a structure;

(6) to the construction, alteration, improvement, or repair carried on within the limits and boundaries of a site or reservation under the exclusive legal jurisdiction of the federal government;

(7) to a person who only furnished materials, supplies, or equipment without fabricating them into or consuming them in the performance of the work of the construction contractor;

(8) to work or operation on one undertaking or project considered of a casual, minor, or inconsequential nature, by one or more contracts, the aggregate contract price of which, for labor and materials and all other items, is less than $2,500 a job. The exemption prescribed in this subsection does not apply when the work or construction is only a part of a larger or major operation, whether undertaken by the same or a different construction contractor, or in which a division of the operation is made into contracts of amounts of less than $2,500 a job for the purpose of evasion of this chapter or otherwise.

(9) to a farmer or rancher while engaged in a farming, dairying, agriculture, viticulture, horticulture, or stock or poultry operation;

(10) to an irrigation district or reclamation district;

(11) to an operation related to clearing or other work upon land in rural districts for fire prevention purposes;

(12) to an owner who contracts for work to be performed by a registered construction contractor, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs a residence on the owner's property with the intention and for the purpose of promptly selling the improved property;

(13) to an owner working on the owner's property, whether occupied by the owner or not, but this exemption does not apply to an owner who is otherwise covered by this chapter who constructs an improvement on the owner's property with the intention and for the purpose of promptly selling the improved property, unless the owner has continuously occupied the property as the owner's primary residence for at least the last 12 months;

(14) to owners of commercial properties who use their own employees to do maintenance, repair, and alteration work in or upon their own properties;

(15) to an architect, civil or professional engineer, or professional land surveyor, licensed in Montana and acting solely in a professional capacity;

(16) to an electrician or plumber, licensed in Montana, operating within the scope of the license;

(17) to a contract security company, licensed under Title 37, chapter 60, operating within the scope of the license;

(18) to a person who engages in the activities regulated as an employee of a registered construction contractor with wages as the sole compensation or as an employee with wages as the sole compensation;

(19) to a person or entity licensed under Title 50, chapter 39, to sell, install, or service fire suppression or fire protection equipment;

(20) to a water well contractor licensed under Title 37, chapter 43, performing the work of a water well contractor;

(21) to an enrolled tribal member or an association, business, corporation, or other entity, at least 51% of which is owned by an enrolled tribal member or members and whose business is conducted solely within the exterior boundaries of an Indian reservation;

(22) to a contractor engaged in the logging industry who builds forest access roads for the purpose of harvesting and transporting logs from forest to mill;

(23) to a person working on the person's own residence, if the residence is owned by a person other than the resident; or

(24) to an independent contractor who has no employees. However, an independent contractor may voluntarily elect to register under this chapter.

History: En. Sec. 10, Ch. 500, L. 1995; amd. Sec. 7, Ch. 548, L. 1997.

Part 3
Business Practices

39-9-301. Business practices — penalty. (1) Except as provided in 39-9-205, a person who has registered under one name as provided in this chapter may not engage in the business or act in the capacity of a construction contractor under any other name unless that name also is registered under this chapter.

(2) A construction contractor may not falsify a registration number and use it in connection with a solicitation or identification as a construction contractor. An individual construction contractor, partner, associate, agent, salesperson, solicitor, officer, or employee of a construction contractor shall use a true name and address at all times while engaged in the business or capacity of a construction contractor or in activities related to a construction contractor.

(3) (a) The finding of a violation of this section by the department at a hearing held in accordance with the Montana Administrative Procedure Act subjects the person who commits the violation to a penalty of not more than $5,000, as determined by the department. The required hearing may be held by telephone or by videoconference. A penalty collected under this section must be deposited in the state special revenue account to the credit of the department for administration and enforcement of this chapter.

(b) Penalties under this section do not apply to a violation that is determined to be an inadvertent error.

History: En. Sec. 11, Ch. 500, L. 1995; amd. Sec. 8, Ch. 548, L. 1997.

39-9-302. Repealed. Sec. 14, Ch. 548, L. 1997.

History: En. Sec. 12, Ch. 500, L. 1995.

39-9-303. Department to compile and update list of registered construction contractors — availability — fee. (1) The department shall compile a list of all construction contractors registered under this chapter and update the list at least bimonthly. The list is public information and must be available to the public upon request for a reasonable fee.

(2) The department shall inform a person, firm, or corporation whether a construction contractor is registered. The department shall provide the information without charge, except for a reasonable fee for any copies made.

History: En. Sec. 13, Ch. 500, L. 1995; amd. Sec. 9, Ch. 548, L. 1997.

39-9-304. Provisions exclusive — certain local authority not limited or abridged. The provisions of this chapter relating to the registration or licensing of a person, firm, or corporation, including the requirement of a bond with the state of Montana named as obligee and the collection of a fee, are exclusive. A political subdivision of the state may not require or issue any registrations, licenses, or bonds for the same or a similar purpose. However, this section does not limit or abridge the authority of a local government to levy and collect a general and nondiscriminatory license fee levied upon all businesses. This section does not limit the authority of a local government with respect to contractors not required to be registered under this chapter.

History: En. Sec. 14, Ch. 500, L. 1995.

Part 4
Infractions — Penalties

39-9-401. Violation — infraction — penalty — disposition. (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

(2) (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $500, as determined by the department. A person

who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or videoconference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-503.

History: En. Sec. 15, Ch. 500, L. 1995; amd. Sec. 10, Ch. 548, L. 1997; amd. Sec. 1, Ch. 377, L. 1999; amd. Sec. 6, Ch. 442, L. 1999.

39-9-402. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 16, Ch. 500, L. 1995.

39-9-403. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305; amd. Sec. 8, Ch. 90, L. 1995.

39-9-404. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 18, Ch. 500, L. 1995.

39-9-405. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 19, Ch. 500, L. 1995.

39-9-406. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 20, Ch. 500, L. 1995.

39-9-407. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 21, Ch. 500, L. 1995.

39-9-408. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 22, Ch. 500, L. 1995.

39-9-409. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 23, Ch. 500, L. 1995.

39-9-410. Repealed. Sec. 14, Ch. 548, L. 1997.
History: En. Sec. 24, Ch. 500, L. 1995.

CHAPTER 10
WORKFORCE DEVELOPMENT
(Terminated)

Part 1 — Natural Resource Workers' Education Program
(Terminated)

Part 2 — Summer Youth Employment Program
(Terminated)

Part 1
Natural Resource Workers' Education Program
(Terminated)

39-10-101. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 1, Ch. 586, L. 2001.

39-10-102. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 2, Ch. 586, L. 2001.

39-10-103. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 3, Ch. 586, L. 2001.

39-10-104. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 4, Ch. 586, L. 2001.

39-10-105. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 5, Ch. 586, L. 2001.

39-10-106. Terminated. Sec. 10, Ch. 586, L. 2001.
History: En. Sec. 6, Ch. 586, L. 2001.

Part 2
Summer Youth Employment Program (Terminated)

39-10-201. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 1, Ch. 525, L. 2001.

39-10-202. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 2, Ch. 525, L. 2001.

39-10-203. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 3, Ch. 525, L. 2001.

39-10-204. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 4, Ch. 525, L. 2001.

39-10-205. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 5, Ch. 525, L. 2001.

39-10-206. Terminated. Sec. 9, Ch. 525, L. 2001.
History: En. Sec. 6, Ch. 525, L. 2001.

CHAPTER 11
PRIMARY SECTOR BUSINESS WORKFORCE TRAINING ACT

Part 1 — General Provisions

39-11-101. Short title.
39-11-102. Purpose.
39-11-103. Definitions.

Part 2 — Workforce Training Grants

39-11-201. Repealed.
39-11-202. Primary sector business workforce training grants — eligibility.
39-11-203. Repealed.
39-11-204. Repealed.

Part 1
General Provisions

39-11-101. Short title. This chapter may be cited as the "Primary Sector Business Workforce Training Act".
History: En. Sec. 1, Ch. 567, L. 2003.

39-11-102. Purpose. (1) The Primary Sector Business Workforce Training Act is created to meet the training needs of existing industries in the state and to provide incentives to businesses to locate and expand within the state through government-assisted new jobs training.

(2) It is the intent of the legislature to provide training funds for businesses to train and educate employees, which will result in the production of high-wage and high-skilled jobs that will increase the earning potential and employment opportunities for Montana employees and enhance the state's economy.
History: En. Sec. 2, Ch. 567, L. 2003.

39-11-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Average weekly wage" has the meaning provided in 39-71-116.

(2) "Department" means the department of commerce established in 2-15-1801.

(3) "Eligible training provider" means:

(a) a unit of the university system, as defined in 20-25-201;

(b) a community college district, as defined in 20-15-101;

(c) an accredited, tribally controlled community college located in the state of Montana; or

(d) an entity approved to provide workforce training that is included on the eligible training provider list.

(4) "Eligible training provider list" means the list maintained by the department of labor and industry of those eligible training providers who may be used to provide workforce training under a grant authorized in 39-11-202.

(5) "Employee" means the individual employed in a new job.

(6) "Employer" means the individual, corporation, partnership, or association providing new jobs and entering into a grant contract.

(7) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work each week.

(8) (a) "New job" means a newly created full-time job in an eligible business.

(b) The term does not include:

(i) jobs for recalled employees returning to positions held previously, for replacement employees, or for employees newly hired as a result of a labor dispute, part-time jobs or seasonal jobs, or other jobs that previously existed within the employment of the employer in the state; or

(ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that the jobs:

(A) are substantially different as a result of the acquisition; and

(B) will require new training for the employee to meet new job requirements.

(9) "Part-time job" means a predominantly year-round position requiring an average of 25 to 34 hours of work each week.

(10) "Primary sector business" means an employer engaged in establishing or expanding operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and:

(a) for which at least 50% of the sales of the employer occur outside of Montana;

(b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana; or

(c) the employer is a new business that provides, as determined by the department, a product or a service that is not available in Montana or a substantially similar product or service that is not available in Montana, which results in state residents leaving the state to purchase the product or service.

(11) "Primary sector business training program" or "program" means the grant provided to employers for the purpose of working with eligible training providers to provide employees with education and training required for jobs in new or expanding primary sector businesses in the state.

(12) (a) "Program costs" means all necessary and incidental costs of providing program services.

(b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

(13) "Program services" means training and education specifically directed to the new jobs, including:

(a) all direct training costs, such as:

(i) program promotion;

(ii) instructor wages, per diem, and travel;

(iii) curriculum development and training materials;

(iv) lease of training equipment and training space;

(v) miscellaneous direct training costs;

(vi) administrative costs; and

(vii) assessment and testing;

(b) in-house or on-the-job training; and

(c) subcontracted services with eligible training providers.

History: En. Sec. 3, Ch. 567, L. 2003; amd. Sec. 3, Ch. 26, L. 2005; amd. Sec. 1, Ch. 169, L. 2005; amd. Sec. 1, Ch. 348, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 348 inserted definition of part-time job; in definition of primary sector business in (c) near middle after "as determined by the" substituted "department" for "committee provided for in 39-11-201"; and made minor changes in style. Amendment effective July 1, 2011.

Part 2
Workforce Training Grants

39-11-201. Repealed. Sec. 3, Ch. 348, L. 2011.

History: En. Sec. 4, Ch. 567, L. 2003; amd. Sec. 47, Ch. 130, L. 2005; amd. Sec. 2, Ch. 169, L. 2005.

39-11-202. Primary sector business workforce training grants — eligibility. (1) Subject to appropriation by the legislature, the department may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers from the eligible training provider list, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

(a) be a value-adding business as defined by the Montana board of investments;

(b) demonstrate a significant positive economic impact to the region and state beyond the job creation involved;

(c) provide a service or function that is essential to the locality or the state; or

(d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least $1 for every $3 requested. The match:

(a) must be from new, unexpended funds available at the time of application;

(b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The department may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed $5,000 for each full-time position and $2,500 for each part-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum wage or the current average weekly wage of the county in which the employees are to be principally employed, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The department may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay high wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the department to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the department may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the department determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the department, the department may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) The department shall provide employers assistance in accessing workforce and education services outside the scope of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.

(9) (a) A contract with a grant recipient must contain provisions:

(i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;

(ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

(iii) providing the department with annual reports and a final closeout report that documents the wages paid to an employee upon completion of the training.

(b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive.

History: En. Sec. 5, Ch. 567, L. 2003; amd. Sec. 4, Ch. 26, L. 2005; amd. Sec. 3, Ch. 169, L. 2005; amd. Sec. 1, Ch. 177, L. 2007; amd. Sec. 2, Ch. 348, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 348 in (1) near beginning substituted "department" for "grant review committee provided for in 39-11-201"; in (3)(b) in two places substituted "department" for "committee"; in (4)(a) in first sentence inserted "and $2,500 for each part-time position" and in second sentence substituted "170% of Montana's current minimum wage" for "Montana's current average weekly wage" and at end inserted "provided minimum wage requirements are met"; in (4)(c) substituted "department" for "committee" and after "jobs that will pay" substituted "high wages" for "significantly higher wages"; in (6)(a) in two places substituted "department" for "committee"; in (7) in three places substituted "department" for "committee"; inserted (8) requiring the department to provide employers assistance in accessing workforce and education services; in (9)(a)(iii) after "documents the" deleted "higher"; and made minor changes in style. Amendment effective July 1, 2011.

39-11-203. Repealed. Sec. 5, Ch. 169, L. 2005.

History: En. Sec. 6, Ch. 567, L. 2003.

39-11-204. Repealed. Sec. 5, Ch. 169, L. 2005.

History: En. Sec. 7, Ch. 567, L. 2003.

CHAPTERS 12 THROUGH 28
RESERVED

CHAPTER 29
VETERANS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-29-101. Definitions.
39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure.
39-29-103. Notice and claim of preference.
39-29-104. Enforcement of preference.
39-29-105 through 39-29-110 reserved.
39-29-111. Retention during reduction in force.
39-29-112. Adoption of rules.

Chapter Cross-References

Legislative grants of special considerations to veterans, Art. II, sec. 35, Mont. Const.

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Part 1
General Provisions

39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Armed forces" means the:

(a) United States army, navy, air force, marine corps, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard.

(2) "Disabled veteran" means a person:

(a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or

(b) who has received a purple heart medal.

(3) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(4) "Military duty" means duty with military pay and allowances in the armed forces.

(5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.

(b) The term does not include:

(i) a state or local elected office;

(ii) appointment by an elected official to a body, such as a board, commission, committee, or council;

(iii) appointment by an elected official to a public office if the appointment is provided for by law;

(iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(v) engagement as an independent contractor or employment by an independent contractor; or

(vi) a position occupied by a student intern, as defined in 2-18-101.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard.

History: En. Sec. 1, Ch. 646, L. 1989; amd. Sec. 1, Ch. 78, L. 1993; amd. Sec. 27, Ch. 308, L. 1995; amd. Sec. 162, Ch. 42, L. 1997; amd. Sec. 11, Ch. 339, L. 1997; amd. Sec. 1, Ch. 24, L. 2003; amd. Sec. 10, Ch. 75, L. 2005.

39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, eligible relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

History: En. Sec. 2, Ch. 646, L. 1989; amd. Sec. 1, Ch. 168, L. 1999.

39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

History: En. Sec. 3, Ch. 646, L. 1989; amd. Sec. 2, Ch. 168, L. 1999.

39-29-104. Enforcement of preference. (1) An applicant who believes that the applicant is entitled to but has not been given the preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the public employer applied the preference under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 4, Ch. 646, L. 1989; amd. Sec. 3, Ch. 168, L. 1999.

39-29-105 through 39-29-110 reserved.

39-29-111. Retention during reduction in force. (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless the employee is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

History: En. Sec. 5, Ch. 646, L. 1989; amd. Sec. 1508, Ch. 56, L. 2009.

39-29-112. Adoption of rules. The department of administration shall adopt rules implementing this chapter. The department's rules apply to all local and state public employers.

History: En. Sec. 6, Ch. 646, L. 1989.

CHAPTER 30
PERSONS WITH DISABILITIES
PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-30-101. Short title.
39-30-102. Purposes.
39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of persons with disabilities.
39-30-108. No application if conflict with federal law.

Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.
39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Part 1
General Provisions

39-30-101. Short title. This chapter may be cited as the "Montana Persons With Disabilities Employment Preference Act".

History: En. Sec. 1, Ch. 1, Sp. L. 1983; amd. Sec. 8, Ch. 646, L. 1989; amd. Sec. 32, Ch. 472, L. 1997.

39-30-102. Purposes. The purposes of this chapter are to recognize past employment discrimination against persons with disabilities and to facilitate the habilitation, rehabilitation, and readjustment of persons with disabilities.

History: En. Sec. 2, Ch. 1, Sp. L. 1983; amd. Sec. 9, Ch. 646, L. 1989; amd. Sec. 33, Ch. 472, L. 1997.

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability.

(2) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in this subsection (2), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in this subsection (2), or current participants in a federally authorized employment program is not an initial hiring.

(3) (a) "Mental impairment" means:

(i) a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(4) "Person with a disability" means an individual certified by the department of public health and human services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(5) "Position" means a position occupied by a permanent or seasonal employee as defined in 2-18-101 for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:

(a) a position occupied by a temporary employee as defined in 2-18-101 for the state or a similar temporary employee with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;

(g) engagement as an independent contractor or employment by an independent contractor; or

(h) a position occupied by a student intern, as defined in 2-18-101.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 1, Sp. L. 1983; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 10, Ch. 646, L. 1989; amd. Sec. 28, Ch. 308, L. 1995; amd. Sec. 62, Ch. 545, L. 1995; amd. Sec. 101, Ch. 546, L. 1995; amd. Sec. 12, Ch. 339, L. 1997; amd. Sec. 34, Ch. 472, L. 1997; amd. Sec. 11, Ch. 75, L. 2005.

Cross-References

The judiciary, Title 3.
Legislative Branch, Title 5.
Developmentally disabled defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of public health and human services in adopting rules governing certification of persons with disabilities for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: En. Sec. 9, Ch. 1, Sp. L. 1983; amd. Sec. 102, Ch. 546, L. 1995; amd. Sec. 35, Ch. 472, L. 1997.

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of persons with disabilities. The department of public health and human services shall certify persons with disabilities for the purpose of employment preference as provided in this chapter.

History: En. Sec. 6, Ch. 1, Sp. L. 1983; amd. Sec. 103, Ch. 546, L. 1995; amd. Sec. 36, Ch. 472, L. 1997.

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: En. Sec. 10, Ch. 1, Sp. L. 1983.

Part 2
Operative Provisions

39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a person with a disability or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference-eligible applicant.

(b) In an initial hiring, a public employer shall hire a person with a disability over any other preference-eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(2)(b) or to any other personnel action that is not an initial hiring.

History: En. Sec. 4, Ch. 1, Sp. L. 1983; amd. Sec. 11, Ch. 646, L. 1989; amd. Sec. 37, Ch. 472, L. 1997.

Cross-References

Preference of Montana labor in public works, 18-2-403.

Management rights of public employers, 39-31-303.

Employment preference no violation of antidiscrimination laws, 49-2-405, 49-3-103.

39-30-202. Eligibility requirements. An eligible spouse or person with a disability is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) the individual is a United States citizen;

(2) the individual has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, the individual has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) the individual meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which the individual is applying.

History: En. Sec. 5, Ch. 1, Sp. L. 1983; amd. Sec. 12, Ch. 646, L. 1989; amd. Sec. 38, Ch. 472, L. 1997.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. Duration of preference. Subject to 39-30-202, a person with a disability or eligible spouse qualifies for employment preference as long as the disabling condition exists.

History: En. Sec. 7, Ch. 1, Sp. L. 1983; amd. Sec. 13, Ch. 646, L. 1989; amd. Sec. 39, Ch. 472, L. 1997.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes that the applicant has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

History: En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983; amd. Sec. 1509, Ch. 56, L. 2009.

39-30-207. Enforcement of preference. (1) An applicant who believes that the applicant has not been accorded the applicant's rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the applicant's application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 8(4), Ch. 1, Sp. L. 1983; amd. Sec. 14, Ch. 646, L. 1989; amd. Sec. 1510, Ch. 56, L. 2009.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Evidence, Title 26.

CHAPTER 31
COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

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Part 1
General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) (a) "Supervisory employee" means an individual having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(b) The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1, Ch. 483, L. 2005.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-31-105. Administrative procedure act applicable — conduct of hearing. All hearings and appeals must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, with the consent of the necessary parties.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616; amd. Sec. 9, Ch. 90, L. 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

Cross-References

Contempts, Title 3, ch. 1, part 5.
Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter may be served by depositing it in the U.S. mail, postage prepaid.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3); amd. Sec. 1, Ch. 10, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 10 at end substituted "may be served by depositing it in the U.S. mail, postage prepaid" for "shall be served as provided by the rules of civil procedure". Amendment effective October 1, 2011.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

History: En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.

Part 2
Public Employee Self-Organization and Certification of Bargaining Representative

Part Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.
Appropriate unit defined, 39-31-103.
Board defined, 39-31-103.
Labor organization defined, 39-31-103.
Public employee defined, 39-31-103.
Public employer defined, 39-31-103.

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. (1) In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2); amd. Sec. 1, Ch. 176, L. 1999.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) A public employee who is a member of a bona fide religious sect or division of a sect, the established and traditional tenets or teachings of which oppose a requirement that a member of the sect or division join or financially support a particular or any labor organization, may not be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment. However, the public employee shall pay in lieu of periodic union dues, initiation fees, and assessments, at the same time or times the periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to the periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. The public employee shall furnish to the labor organization written receipts evidencing the payments, and failure to make the payments or furnish the receipts subjects the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to exercise the right of nonassociation with a labor organization as provided in this section shall make written application to the presiding officer of the board of personnel appeals. Within 10 days of the date of receipt of an application, the presiding officer shall appoint a committee of three consisting of a member of the clergy not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who is the presiding officer. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not the public employee qualifies for the right of nonassociation with the labor organization. The committee's decision must be made in writing within 3 days of the meeting date, and a copy of the decision must be mailed to the public employee, labor organization, and presiding officer of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985; amd. Sec. 1511, Ch. 56, L. 2009.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Part 3
Bargaining

Part Cross-References

Reduction in force — severance pay and retraining allowance required, 2-18-622.
Contributions, 2-18-703.
Veterans' public employment preference, Title 39, ch. 29.
Persons with disabilities public employment preference, Title 39, ch. 30.
Board defined, 39-31-103.
Public employer defined, 39-31-103.

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising under an agreement and the execution of a written contract incorporating any agreement reached. The obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4); amd. Sec. 1512, Ch. 56, L. 2009.

39-31-306. Collective bargaining agreements. (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610; amd. Sec. 1, Ch. 582, L. 1993.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: **En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).**

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

History: **En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979; amd. Sec. 10, Ch. 90, L. 1995.**

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: **En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).**

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. A person may not serve as a fact finder or as an arbitrator under this chapter until the person has successfully completed the course or equivalent education.

History: **En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1; amd. Sec. 1513, Ch. 56, L. 2009.**

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: **En. Sec. 3, Ch. 7, Sp. L. 1982.**

Part 4
Unfair Labor Practices

Part Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.
"Public employer" defined, 39-31-103.
"Unfair labor practice" defined, 39-31-103.

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization. However, subject to rules adopted by the board under 39-31-104, an employer is

not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. However, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member must have an amount equal to the union initiation fee and monthly dues deducted from the employee's wages in the same manner as checkoff of union dues.

(4) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979; amd. Sec. 1514, Ch. 56, L. 2009.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce:

(a) employees in the exercise of the right guaranteed in 39-31-201; or

(b) a public employer in the selection of a representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2); amd. Sec. 1515, Ch. 56, L. 2009.

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. A notice of hearing may not be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period must be computed from the day of discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1516, Ch. 56, L. 2009.

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a

member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged must be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In a hearing, the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent must be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice and to take affirmative action, including reinstatement of employees with or without backpay, that will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. An order of the board may not require the reinstatement of an individual as an employee who has been suspended or discharged or the payment to the employee of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which must be filed with the board, and if exceptions are not filed within 20 days after service of the proposed decision and recommended order upon the parties or within a further period that the board may authorize, the recommended order becomes the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted but either or both of the parties fail to submit their brief on the date set by the hearings examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983; amd. Sec. 1517, Ch. 56, L. 2009.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

Part 5
Police Officers — Strikes Prohibited — Binding Arbitration

39-31-501. Strikes by police officers prohibited. (1) It is unlawful for a police officer to strike or recognize a picket line of a labor organization while in the performance of official duties.

(2) (a) As used in this section, "strike" means an action listed in subsection (2)(b), in concerted action with others, for the purpose of inducing, influencing, or coercing a change in the conditions of employment, compensation, rights, privileges, or obligations of employment of a police officer.

(b) A police officer may not engage in the following actions in concert with others:

(i) refusal to report for duty;

(ii) willful absence from the police officer's position;

(iii) stoppage of work; or

(iv) departure from the full, faithful, or proper performance of duties of employment.

History: En. Sec. 1, Ch. 225, L. 2005.

39-31-502. Mediation of disputes. (1) If after a 150-calendar-day period of good faith negotiation over the terms of an agreement or 150 days after certification or recognition of an exclusive representative an agreement has not been signed, either or both of the parties may notify the board of personnel appeals of the status of the negotiations and of the need for a mediator. The parties may agree to request a mediator before the end of the 150-day period. The 150-day period begins when the parties meet for the first bargaining session and each party has received the other party's initial proposal. Upon receipt of the notification, the board of personnel appeals shall appoint a mediator and notify the parties of the appointment.

(2) (a) After 15 days of mediation, either party may declare an impasse. The mediator may declare an impasse at any time during the mediation process. Written notification of an impasse must be filed with the board of personnel appeals.

(b) Within 7 days of the declaration of an impasse, each party shall submit to the mediator the final written offer of the party, including a cost summary of the offer. Within 7 days of receipt of the final offers, the mediator shall make public the final offers, including any proposed contract language and each party's cost summary addressing those issues on which the parties have failed to reach an agreement. Each party's proposed contract language must be titled "Final Offer".

(c) Within 30 days after the mediator makes public the parties' final offers, the parties may agree to and, upon agreement, shall jointly petition the board of personnel appeals to appoint a fact finder. The fact finder must be appointed as provided in 39-31-308(2).

(d) If an agreement is not reached within 30 days after the mediator makes the final offers public or, if the parties participated in fact finding, within 30 days after the receipt of the fact finder's report, either party may petition the board of personnel appeals for binding arbitration. The petition must include a copy of each party's final offer, as provided in subsection (2)(b).

History: En. Sec. 2, Ch. 225, L. 2005.

39-31-503. Binding arbitration — policy. (1) It is the policy of the state that because the right of police officers to strike is prohibited by 39-31-501, it is necessary to the high morale of police officers and to the efficient operation of police departments to provide an alternative, expeditious, and effective procedure for the resolution of labor disputes through binding arbitration.

(2) Binding arbitration must be scheduled by mutual agreement no earlier than 30 days following the submission of the petition seeking binding arbitration under 39-31-502(2)(d).

History: En. Sec. 3, Ch. 225, L. 2005.

39-31-504. Selection of arbitrator — procedure — cost-sharing. (1) (a) After receipt of the petition to arbitrate under 39-31-502(2)(d), the board of personnel appeals shall submit a list of five qualified, disinterested, and unbiased individuals to the parties. Each party shall alternately strike two names from the list. The order of striking names must be determined by a coin toss. The remaining individual is the arbitrator.

(b) If the parties have not designated the arbitrator and notified the board of personnel appeals of their choice within 5 days of receipt of the list, the board of personnel appeals shall appoint the arbitrator from the names on the list. However, if one of the parties strikes names from the list, as provided in subsection (1)(a), the board of personnel appeals shall appoint the arbitrator from the names remaining on the list.

(2) The arbitrator shall establish the dates, times, and places of hearings. The arbitrator may issue subpoenas. Within 14 calendar days prior to the date of a hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects. The last best offer package may not be changed. The arbitrator may administer oaths and shall afford the parties the opportunity to examine and cross-examine all witnesses and to present evidence relevant to the dispute.

(3) The arbitrator shall decide the unresolved mandatory subjects contained in the last best offer package. The arbitrator shall base findings and opinions on the criteria listed in subsections (3)(a) through (3)(h). Primary consideration must be given to the criteria in subsection (3)(a). The criteria are:

(a) the interest and welfare of the public;

(b) the reasonable financial ability of the unit of government to meet the costs of the proposed contract, giving consideration and weight to the other services provided by the unit of government, as determined by the governing body of the unit of government;

(c) the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided;

(d) the overall compensation presently received by the police officers, including direct wage compensation, holiday pay, other paid excused time, insurance, and all other direct or indirect monetary benefits;

(e) comparison of the overall compensation of other police officers in comparable communities with similar populations in Montana and contiguous states;

(f) inflation as measured by the consumer price index, U.S. city average, commonly known as the cost of living;

(g) the stipulations of the parties; and

(h) other factors, consistent with subsections (3)(a) through (3)(g), that are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator may not use other factors if, in the judgment of the arbitrator, the factors listed in subsections (3)(a) through (3)(g) provide a sufficient basis for an award.

(4) Within 30 days after the conclusion of the hearings or an additional period agreed upon by the parties, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall make written findings along with an opinion and order. The opinion and order must be served on the parties and the board of personnel appeals. Service may be made by personal delivery or by certified mail. The findings, opinion, and order must be based upon the criteria listed in subsection (3).

(5) The cost of arbitration must be borne equally by the parties.

History: En. Sec. 4, Ch. 225, L. 2005.

39-31-505. Arbitration decision final. Subject to Title 27, chapter 5, part 3, the decision of the arbitrator is final and is binding on the parties, and the board of personnel appeals shall issue an order containing the decision. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. An order issued by the board of personnel appeals pursuant to this section may be enforced by either party or the board of personnel appeals in the district court for any county in which the dispute arose.

History: En. Sec. 5, Ch. 225, L. 2005.

CHAPTER 32
COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Repealed.
39-32-108. Repealed.
39-32-109. Unfair labor practices.
39-32-110. Unlawful strikes.
39-32-111. Repealed.
39-32-112. Adjudication of unfair labor practices complaints by board.
39-32-113. Representation questions decided by board.
39-32-114. Subpoena power of board.

Chapter Cross-References

Regulation and licensure of nurses, Title 37, ch. 8.
Appropriate unit defined, 39-32-102.
Employee defined, 39-32-102.
Health care facility defined, 39-32-102.
Regulation and licensure of hospitals, Title 50, ch. 5.

Part 1
General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of the member's obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees, whether operated publicly or privately, having as one of its principal purposes the preservation of health, the care of sick or infirm individuals, or both.

(5) "Strike" means any work stoppage caused by the employees of a health care facility that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5); amd. Sec. 1, Ch. 485, L. 1983; amd. Sec. 1518, Ch. 56, L. 2009.

39-32-103. Rules. The board shall adopt and promulgate rules to carry into effect the provisions of this chapter.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3); amd. Sec. 2, Ch. 485, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-32-104. Hearings for determination of appropriate unit. The board may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2).

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1); amd. Sec. 3, Ch. 485, L. 1983.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The board may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2); amd. Sec. 4, Ch. 485, L. 1983.

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the board and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204; amd. Sec. 5, Ch. 485, L. 1983.

39-32-107. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.

39-32-108. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection (1)(d), it is a requirement of bargaining in good faith that the parties be willing to reduce to writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of the action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights ensured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of a representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203; amd. Sec. 6, Ch. 485, L. 1983; (2)En. Sec. 7, Ch. 485, L. 1983; amd. Sec. 1519, Ch. 56, L. 2009.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-111. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

39-32-112. Adjudication of unfair labor practices complaints by board. Violations of 39-32-109 are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

History: En. Sec. 8, Ch. 485, L. 1983.

39-32-113. Representation questions decided by board. Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

History: En. Sec. 9, Ch. 485, L. 1983.

39-32-114. Subpoena power of board. The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

History: En. Sec. 10, Ch. 485, L. 1983.

Cross-References

Procedural rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 33
GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

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39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
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39-33-205. Penalties.

Part 1
Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of the proprietor's or partner's immediate family may do any work in the place of business without interference by any union or any member of the union.

History: En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801; amd. Sec. 1520, Ch. 56, L. 2009.

39-33-102. Immediate family defined. "Immediate family" includes the owner, the owner's spouse, and any children under the age of 18 years.

History: En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803; amd. Sec. 1521, Ch. 56, L. 2009.

39-33-103. Unfair labor practice. Any union or member of a union who infringes or interferes with the right of an owner and the members of the owner's immediate family to do any work in the owner's place of business is guilty of an unfair labor practice.

History: En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802; amd. Sec. 1522, Ch. 56, L. 2009.

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

Cross-References

Liquor licenses, Title 16, ch. 4.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2
Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in the dispute a professional strikebreaker who customarily and repeatedly offers to be employed in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers to be employed in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502; amd. Sec. 1523, Ch. 56, L. 2009.

Cross-References

Importation of armed persons, Art. II, sec. 33, Mont. Const.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.

Cross-References

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

CHAPTER 34
ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
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Chapter Cross-References

Firefighters and fire protection, Title 7, ch. 33.

Uniform Arbitration Act, Title 27, ch. 5.

Part 1
General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of the determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981; amd. Sec. 1524, Ch. 56, L. 2009.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

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CHAPTER 51
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Part 1
General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity because of unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern that requires appropriate action by the legislature to prevent its spread and to lighten its burden that now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by

the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this chapter under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102; amd. Sec. 1525, Ch. 56, L. 2009.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Laws giving irrevocable privileges prohibited, Art. II, sec. 31, Mont. Const.

Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.

39-51-107 through 39-51-109 reserved.

39-51-110. Collateral estoppel. A finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under this chapter may not be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum except for proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

History: En. Sec. 7, Ch. 442, L. 1999.

Part 2
Definitions

Part Cross-References
General definitions, 39-51-201.

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means:

(a) the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year;

(b) if the individual does not have sufficient wages to qualify for benefits under subsection (2)(a), the 4 most recently completed calendar quarters immediately preceding the first day of the individual's benefit year;

(c) in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the period applicable under the unemployment law of the paying state; or

(d) for an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state because of a temporary total disability, as defined in 39-71-116, or a similar statute of another state or the United States, the first 4 quarters of the last 5 completed calendar quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefit year" means the 52-consecutive-week period beginning with the first day of the calendar week in which an individual files a valid claim for benefits, except that the benefit year is 53 weeks if filing a new valid claim would result in overlapping any quarter of the base period of a previously filed new claim. A subsequent benefit year may not be established in Montana until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the benefit year is the period applicable under the unemployment law of the paying state.

(4) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) (a) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(10) "Employing unit" means any individual or organization, including the state government and any of its political subdivisions or instrumentalities or an Indian tribe or tribal unit, partnership, association, trust, estate, joint-stock company, insurance company, limited liability company or limited liability partnership that has filed with the secretary of state, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or the trustee's successor, or legal representative of a deceased person in whose employ one or more individuals perform or performed services within this state, except as provided under 39-51-204(1)(a) and (1)(q). All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is considered to be employed by the employing unit for the purposes of this

chapter, whether the individual was hired or paid directly by the employing unit or by the agent or employee, provided that the employing unit has actual or constructive knowledge of the work.

(11) "Employment office" means a free public employment office or branch of an office operated by this state or maintained as a part of a state-controlled system of public employment offices or other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(12) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions must be paid and from which all benefits provided under this chapter must be paid.

(13) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of a fellow employee or the employer.

(14) "Hospital" means an institution that has been licensed, certified, or approved by the state as a hospital.

(15) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417.

(16) "Indian tribe" means an Indian tribe as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b(e).

(17) (a) "Institution of higher education", for the purposes of this part, means an educational institution that:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which the institution awards a bachelor's or higher degree or provides a program that is acceptable for full credit toward a bachelor's or higher degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) All universities in this state are institutions of higher education for purposes of this part.

(18) "Licensed and practicing health care provider" means a health care provider who is primarily responsible for the treatment of a person seeking unemployment insurance benefits and who is:

(a) licensed to practice in this state as:

(i) a physician under Title 37, chapter 3;

(ii) a dentist under Title 37, chapter 4;

(iii) an advanced practice registered nurse under Title 37, chapter 8, and recognized as a nurse practitioner or certified nurse specialist by the board of nursing, established in 2-15-1734;

(iv) a physical therapist under Title 37, chapter 11;

(v) a chiropractor under Title 37, chapter 12;

(vi) a clinical psychologist under Title 37, chapter 17; or

(vii) a physician assistant under Title 37, chapter 20; or

(b) with respect to a person seeking unemployment insurance benefits who resides outside of this state, a health care provider licensed or certified as a member of one of the professions listed in subsection (18)(a) in the jurisdiction where the person seeking the benefit lives.

(19) (a) "Misconduct" includes but is not limited to the following conduct by an employee:

(i) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer;

(ii) deliberate violations or disregard of standards of behavior that the employer has the right to expect of an employee;

(iii) carelessness or negligence that causes or is likely to cause serious bodily harm to the employer or a fellow employee; or

(iv) carelessness or negligence of a degree or that reoccurs to a degree to show an intentional or substantial disregard of the employer's interest.

(b) The term does not include:

(i) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(ii) inadvertent or ordinary negligence in isolated instances; or

(iii) good faith errors in judgment or discretion.

(20) "No-additional-cost service" has the meaning provided in section 132 of the Internal Revenue Code, 26 U.S.C. 132.

(21) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and Canada.

(22) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(23) "Tribal unit" means an Indian tribe and any tribal subdivision or subsidiary or any business enterprise that is wholly owned by that tribe.

(24) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter must be paid.

(25) (a) "Wages", unless specifically exempted under subsection (25)(b), means all remuneration payable for personal services, including the cash value of all remuneration paid in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash must be estimated and determined pursuant to rules prescribed by the department. The term includes but is not limited to:

(i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness periods;

(ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and

(iii) tips or other gratuities received by the employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax purposes.

(b) The term does not include:

(i) the amount of any payment made by the employer for employees, if the payment was made for:

(A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(B) sickness or accident disability under a workers' compensation policy;

(C) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; or

(D) death, including life insurance for the employee or the employee's immediate family;

(ii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules;

(iii) a no-additional-cost service;

(iv) wage subsidies received pursuant to the alternative trade adjustment assistance for older workers program, 19 U.S.C. 2318; or

(v) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited liability company that is treated as a partnership or sole proprietorship pursuant to 39-51-207 or to a partner in a limited partnership that has filed with the secretary of state when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

(26) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(27) "Weekly benefit amount" means the amount of benefits that an individual would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973;

amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 245, L. 1983; amd. Sec. 1, Ch. 23, L. 1985; amd. Sec. 1, Ch. 125, L. 1985; amd. Sec. 1, Ch. 461, L. 1985; amd. Sec. 1, Ch. 234, L. 1987; amd. Sec. 1, Ch. 314, L. 1987; amd. Sec. 95, Ch. 370, L. 1987; amd. Sec. 1, Ch. 618, L. 1989; amd. Sec. 1, Ch. 261, L. 1991; amd. Sec. 1, Ch. 373, L. 1991; amd. Sec. 2, Ch. 195, L. 1995; amd. Sec. 3, Ch. 60, L. 1997; amd. Sec. 18, Ch. 491, L. 1997; amd. Sec. 2, Ch. 200, L. 2001; amd. Sec. 1, Ch. 267, L. 2003; amd. Sec. 5, Ch. 448, L. 2005; amd. Sec. 1, Ch. 466, L. 2005; amd. Sec. 2, Ch. 52, L. 2007; amd. Sec. 1, Ch. 25, L. 2009; amd. Sec. 28, Ch. 489, L. 2009; amd. Sec. 1, Ch. 98, L. 2011; amd. Sec. 2, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 98 inserted definition of misconduct; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 123 in definition of wages inserted (b)(v) related to a salary, draw, or profit distribution paid to certain entities; and made minor changes in style. Amendment effective October 1, 2011.

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

(4) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(5) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(6) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(7) any employing unit which, having become an employer under subsection (1), (2), (3), (4), (5), or (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(8) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979; amd. Sec. 2, Ch. 125, L. 1985; amd. Sec. 2, Ch. 618, L. 1989; amd. Sec. 2, Ch. 373, L. 1991.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual, by a manager or member of a limited liability company treated as a corporation pursuant to 39-51-207, or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and outside this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within the state; or

(ii) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state; for example, the out-of-state service is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) and performed entirely outside the state and on which contributions are neither required nor paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing the services is a resident of this state and the department approves the election of the employing unit for whom the services are performed in order that the entire service of the individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including those individuals who work for the state of Montana, its universities, public schools, components or units of universities or public schools, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of subsection (2) or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation that is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of subsections (7)(a)(i) and (7)(a)(ii) are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on the service under the law of this state.

(b) An "American employer", for purposes of this subsection (7), means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 234, L. 1987; amd. Sec. 2, Ch. 314, L. 1987; amd. Sec. 3, Ch. 618, L. 1989; amd. Sec. 3, Ch. 373, L. 1991; amd. Sec. 3, Ch. 195, L. 1995; amd. Sec. 3, Ch. 52, L. 2007.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) services performed by qualified real estate agents, as defined in 26 U.S.C. 3508, or insurance salespeople paid solely by commission and without a guarantee of minimum earnings;

(e) service performed by a cosmetologist or barber who is licensed under Title 37, chapter 31, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a salon or shop, as defined in 37-31-101, and the contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the salon or shop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(h) service performed as a direct seller as defined by 26 U.S.C. 3508;

(i) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(j) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(k) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(l) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, any agency of a state or political subdivision of the state, or an Indian tribe by an individual receiving work relief or work training;

(m) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(n) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(o) service performed by elected public officials;

(p) agricultural labor, except as provided in 39-51-202(2), (4), or (6). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(q) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in 5 U.S.C. 8501(1)(I) and section 3306(c)(6) of the Federal Unemployment Tax Act;

(r) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(s) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by the spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(t) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection (1)(t) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(u) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(v) service performed by an alien as identified in 8 U.S.C. 1101(a)(15)(F), (a)(15)(H)(ii)(a), (a)(15)(J), (a)(15)(M), or (a)(15)(Q);

(w) service performed in a fishing rights-related activity of an Indian tribe by a member of the tribe for another member of that tribe or for a qualified Indian entity, as defined in 26 U.S.C. 7873;

(x) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(y) service performed by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(z) services performed by an election judge appointed pursuant to 13-4-101 if the remuneration received for those services is less than $1,000 in the calendar year; or

(aa) service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq., or the Domestic Volunteer Service Act of 1973, 42 U.S.C. 4950, et seq.

(2) (a) Except as provided in subsection (2)(b), an individual found to be an independent contractor by the department under the terms of 39-71-417 is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(b) An officer or a manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) and who obtains an independent contractor exemption pursuant to 39-71-417(1)(a)(ii) is not considered an independent contractor for the purposes of this chapter.

(3) This section does not apply to a state or local governmental entity, an Indian tribe or tribal unit, or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 357, L. 1983; amd. Sec. 3, Ch. 125, L. 1985; amd. Sec. 3, Ch. 234, L. 1987; amd. Sec. 1, Ch. 526, L. 1987; amd. Sec. 4, Ch. 618, L. 1989; amd. Sec. 4, Ch. 373, L. 1991; amd. Sec. 1, Ch. 573, L. 1991; amd. Sec. 1, Ch. 171, L. 1993; amd. Sec. 11, Ch. 473, L. 1993; amd. Sec. 2, Ch. 48, L. 1995; amd. Sec. 1, Ch. 95, L. 1995; amd. Sec. 4, Ch. 195, L. 1995; amd. Sec. 4, Ch. 60, L. 1997; amd. Sec. 19, Ch. 491, L. 1997; amd. Sec. 2, Ch. 61, L. 1999; amd. Sec. 3, Ch. 200, L. 2001; amd. Sec. 1, Ch. 339, L. 2001; amd. Sec. 2, Ch. 83, L. 2003; amd. Sec. 1, Ch. 94, L. 2003; amd. Sec. 1, Ch. 197, L. 2003; amd. Sec. 20, Ch. 243, L. 2003; amd. Sec. 6, Ch. 448, L. 2005; amd. Sec. 2, Ch. 466, L. 2005; amd. Sec. 4, Ch. 52, L. 2007; amd. Sec. 1, Ch. 340, L. 2007; amd. Sec. 3, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 deleted former (1)(g) that read: "(g) service performed by sole proprietors, working members of a partnership, members of a limited liability company treated as a partnership or sole proprietorship pursuant to 39-51-207, or partners in a limited liability partnership that has filed with the secretary of state"; inserted (1)(aa) regarding certain volunteer service; and made minor changes in style. Amendment effective October 1, 2011.

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of crew furnished by crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person must be treated as an employee of the crew leader if:

(a) the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended, 29 U.S.C. 1801, et seq.; or

(b) (i) substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment that is provided by the crew leader; and

(ii) the individual is not an employee of the other person for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subsection (1):

(a) the other person and not the crew leader must be treated as the employer of the individual; and

(b) the other person must be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the crew leader's own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on the crew leader's own behalf or on behalf of the other person, the individuals furnished by the crew leader for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 5, Ch. 618, L. 1989; amd. Sec. 5, Ch. 373, L. 1991; amd. Sec. 1526, Ch. 56, L. 2009.

39-51-207. Treatment of limited liability companies. For the purposes of this chapter, a limited liability company is treated as follows:

(1) as a sole proprietorship if it is a single-member limited liability company;

(2) as a partnership if it consists of more than a single member and it is not established as a corporation pursuant to the provisions of the Internal Revenue Code for income tax purposes; or

(3) as a corporation if it is classified as a corporation for income tax purposes pursuant to the Internal Revenue Code.

History: En. Sec. 1, Ch. 52, L. 2007.

Part 3
General Administrative Provisions

Part Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Civil rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

General definitions, 39-51-201.

39-51-301. Administration — duties and powers of department — duties and powers of board — emergency provisions. (1) It is the duty of the department to administer this chapter. The department may adopt, amend, or rescind rules to employ persons, make expenditures, require reports, make investigations, and take action that the department considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and must have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, the department shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) (a) The department and the board may jointly or individually issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under this chapter.

(b) If a subpoena issued and served under this section is disobeyed or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

(5) (a) In the aftermath of a disaster, as defined in 10-3-103, the department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registration for work, or work search if all of the following conditions are met:

(i) the president of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and

(ii) the governor issues an executive order directing the department to waive, suspend, or modify rules relating to claims.

(b) In a disaster declared under subsection (5)(a), the department may waive, suspend, or modify its rules relating to claims in portions of the state named by the department as appropriate to address the nature of the disaster and the purposes of unemployment insurance laws.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 125, L. 1983; amd. Sec. 4, Ch. 125, L. 1985; amd. Sec. 20, Ch. 491, L. 1997; amd. Sec. 3, Ch. 61, L. 1999; amd. Sec. 6, Ch. 597, L. 2003; amd. Sec. 3, Ch. 466, L. 2005; amd. Sec. 5, Ch. 52, L. 2007; amd. Sec. 20, Ch. 81, L. 2007; amd. Sec. 2, Ch. 25, L. 2009; amd. Sec. 4, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 in (4)(a) near beginning inserted "jointly or individually", and after "records" inserted "papers, documents, and other objects that may be necessary and proper"; inserted (4)(b) related to issuance of subpoena; and made minor changes in style. Amendment effective October 1, 2011.

Cross-References

Rights to property, 2-15-132.
Rules and orders, 2-15-133.
Legal proceedings, 2-15-134.
Rights and duties under existing transactions, 2-15-135.

39-51-302. Administrative rules. The department may adopt procedural and substantive rules necessary to implement this chapter.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 125, L. 1985; amd. Sec. 4, Ch. 61, L. 1999; amd. Sec. 4, Ch. 466, L. 2005.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, and any other material the department considers relevant and suitable and shall furnish the same to any person upon application.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 370, L. 1989.

39-51-304. Personnel. The department shall hire personnel to administer this chapter in accordance with principles adopted by the department of administration.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 125, L. 1985; amd. Sec. 45, Ch. 18, L. 1995.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint impartial salaried appeals referees who are necessary for the proper administration of this chapter in accordance with 39-51-304. A person may not participate on behalf of the department in any case in which the person is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 125, L. 1985; amd. Sec. 1527, Ch. 56, L. 2009.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in the number and in places that may be necessary for the proper administration of this chapter and for the purpose of performing the duties that are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (29 U.S.C. 49), as amended.

(2) The department is charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are accepted by this state in conformity with section 4 of that act, and this state shall observe and comply with the requirements of the act. The department is designated and constituted the agency of this state for the purpose of the act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or

with any private, nonprofit organization, and as a part of such an agreement, the department may accept money, services, or quarters as a contribution to the employment service account.

History: **En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981; amd. Sec. 163, Ch. 42, L. 1997.**

39-51-308. Acquisition and disposition of property by department. (1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: **En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant to this chapter must be prosecuted by the attorney general of the state or, at the attorney general's request and under the attorney general's direction, by the county attorney of the county in which the crime was committed.

History: **En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1528, Ch. 56, L. 2009.**

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

History: **En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4); amd. Sec. 3, Ch. 314, L. 1987; amd. Sec. 8, Ch. 442, L. 1999; amd. Sec. 3, Ch. 25, L. 2009.**

Cross-References

Quasi-judicial boards, 2-15-124.

Part 4
Financial Administration

Part Cross-References

Ex officio State Treasurer, 2-15-1002.
State treasury fund structure, Title 17, ch. 2.
General definitions, 39-51-201.
Employment security account, 39-51-409.

39-51-401. Unemployment insurance fund — establishment and control. There is established separate and apart from all public money or funds of this state a fund in the enterprise fund type known as the unemployment insurance fund, which must be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in the Montana Code Annotated means the unemployment insurance enterprise fund. All money in the fund must be mingled and undivided. This fund consists of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of the property or securities acquired by the fund; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 21, Ch. 281, L. 1983; amd. Sec. 164, Ch. 42, L. 1997; amd. Sec. 20, Ch. 34, L. 2001.

39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer that fund in accordance with this chapter. The commissioner shall maintain within the fund three separate accounts:

(a) a clearing account;
(b) an unemployment trust fund account; and
(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act (42 U.S.C. 1104), as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but a public deposit insurance charge or premium may not be paid out of the unemployment insurance fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 22, Ch. 281, L. 1983; amd. Sec. 8, Ch. 125, L. 1985; amd. Sec. 165, Ch. 42, L. 1997.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits. (1) Money may be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with section 904 of the Social Security Act, 42 U.S.C. 1104, and with regulations prescribed by the department. Money withheld by the department from a benefits payment at the request of an individual, in accordance with the department's rules pertaining to deductions and withholding for federal income tax purposes pursuant to 39-51-2207, for repayment of an overissuance of food stamp benefits pursuant to 39-51-2208, or for repayment of child support obligations pursuant to 39-51-3106 must be considered benefits for the purposes of this subsection.

(2) The department shall from time to time requisition from the unemployment trust fund amounts, not exceeding the amounts in this state in the fund, that it considers necessary for the payment of benefits for a reasonable future period. Upon receipt of a requisition, the secretary of the treasury of the United States shall deposit the money in the benefit account. Upon receipt of the deposit, the department shall issue warrants for the payment of benefits solely from the benefit account.

(3) Expenditures of money in the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned must be deducted from estimates for and may be used for the payment of benefits during succeeding periods or, in the discretion of the department, must be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 166, Ch. 42, L. 1997; amd. Sec. 5, Ch. 60, L. 1997; amd. Sec. 55, Ch. 2, L. 2009; amd. Sec. 5, Ch. 88, L. 2009.

39-51-404. Special administrative funds. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, 42 U.S.C. 1103, as amended, may be used, pursuant to a specific appropriation by the legislature, for the payment of expenses incurred by the department for the administration of the unemployment insurance laws and public employment offices. The appropriation must specify the purposes of the appropriation and the amounts of the appropriation.

(2) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(3) The following assessments must be levied against and paid by the indicated employers:

(a) 0.13% of all taxable wages paid by employers assigned a Rate Class 1, Schedules I and II, and Rate Class 2, Schedule I, contribution rate as provided in 39-51-1218;

(b) 0.18% of all taxable wages paid by employers assigned a contribution rate other than Rate Class 1, Schedules I and II, and Rate class 2, Schedule I, as provided in 39-51-1218;

(c) 0.18% of all taxable wages paid by employers assigned an industrial rate as provided in 39-51-1217;

(d) 0.08% of total wages paid by all employers as provided in 39-51-1124;

(e) 0.09% of total wages paid by all employers as provided in 39-51-1212.

(4) All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

(5) The following assessments and investment income from those assessments are designated to be used for the administration of the unemployment insurance program:

(a) 0.05% of all taxable wages paid by all employers as provided in 39-51-1218;

(b) 0.05% of all taxable wages paid by employers assigned an industry rate as provided in 39-51-1217;

(c) 0.03% of total wages paid by all employers as provided in 39-51-1124; and

(d) 0.04% of total wages paid by all employers as provided in 39-51-1212.

(6) If unemployment insurance funding sources exceed the needs of the unemployment insurance program, all or a portion of the excess may be appropriated and used for the purposes outlined in 39-51-409.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 251, L. 1983; amd. Sec. 23, Ch. 281, L. 1983; (4)En. Sec. 1, Ch. 304, L. 1983; amd. Sec. 2, Ch. 461, L. 1985; amd. Sec. 1, Ch. 422, L. 1989; amd. Sec. 1, Ch. 15, Sp. L. January 1992; amd. Sec. 1, Ch. 173, L. 1993; amd. Sec. 167, Ch. 42, L. 1997; amd. Sec. 1, Ch. 399, L. 1999; amd. Sec. 2, Ch. 94, L. 2003; amd. Sec. 1, Ch. 362, L. 2007; amd. Sec. 4, Ch. 25, L. 2009.

39-51-405. Signatures required on warrants. All warrants issued for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of the commissioner of labor and industry or an agent authorized for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 52, L. 2007.

Cross-References

Warrants for payment of state funds, 17-8-301.

39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is available for appropriation to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration of unemployment insurance laws.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302 of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302 of the Social Security Act, 42 U.S.C. 502, as amended; and

(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from the United States or any agency of the United States that are designated for use in the administration of the unemployment insurance program.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983; amd. Sec. 2, Ch. 15, Sp. L. January 1992; amd. Sec. 61, Ch. 10, L. 1993; amd. Sec. 7, Ch. 52, L. 2007; amd. Sec. 8, Ch. 10, L. 2009; amd. Sec. 5, Ch. 25, L. 2009.

Cross-References

State treasury fund structure, Title 17, ch. 2.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

39-51-407. Reimbursement of fund by state. The state of Montana shall replace within a reasonable time any money received under section 302 of the Social Security Act, 42 U.S.C. 502, that because of any action or contingency has been lost or has been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor of the United States for the proper administration of Montana's unemployment insurance laws.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 25, Ch. 281, L. 1983; amd. Sec. 4, Ch. 234, L. 1987; amd. Sec. 34, Ch. 112, L. 1991; amd. Sec. 168, Ch. 42, L. 1997; amd. Sec. 6, Ch. 25, L. 2009.

39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of any advances in accordance with the conditions specified in section 1201 of the Social Security Act, 42 U.S.C. 1321.

(2) (a) The interest cost, if any, from the advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate must be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

History: En. Sec. 1, Ch. 273, L. 1983; amd. Sec. 7, Ch. 25, L. 2009.

39-51-409. Employment security account. (1) There is an account in the state special revenue fund called the employment security account.

(2) Money deposited in the employment security account may be appropriated to the department for payment of:

(a) unemployment insurance benefits;

(b) expenses incurred in the administration of the unemployment insurance program;

(c) expenses incurred in collecting money deposited in the account;

(d) expenses incurred for the employment offices established in 39-51-307, including expenses for providing services to the business community;

(e) expenses incurred for the apprenticeship and training program;

(f) expenses for displaced homemaker programs provided for under 39-7-305;

(g) expenses for department research and analysis functions that provide employment, wage, and economic data;

(h) expenses for department functions pertaining to wage and hour laws, prevailing wages, and collective bargaining; and

(i) principal, interest, and redemption premium on employment security revenue bonds authorized in section 5, Chapter 435, Laws of 2009.

(3) Except as provided in sections 6 and 12, Chapter 435, Laws of 2009, the department may transfer funds from the employment security account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide for the employment services programs identified in subsection (2).

(4) The department may transfer appropriation authority in employment services programs between the federal special revenue and the state special revenue fund types.

History: En. Sec. 2, Ch. 173, L. 1993; amd. Sec. 2, Ch. 399, L. 1999; amd. Sec. 5, Ch. 466, L. 2005; amd. Sec. 2, Ch. 362, L. 2007; amd. Sec. 13, Ch. 435, L. 2009.

Part 5
Governmental Cooperation

Part Cross-References

General definitions, 39-51-201.

39-51-501. State-federal cooperation. (1) (a) In the administration of this chapter, the department shall:

(i) afford reasonable cooperation to every agency of the United States charged with the administration of any unemployment insurance law;

(ii) disclose wage and other required information to authorized recipients as provided by 42 U.S.C. 503; and

(iii) establish necessary safeguards to ensure that any information disclosed is used only for the purposes outlined in 42 U.S.C. 503.

(b) The department may charge fees commensurate with the costs of providing any information pursuant to subsection (1)(a) and shall deposit the fees in the state special revenue fund.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in a manner considered advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is authorized to perform any acts, including the execution of agreements and contracts that may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion considers it advisable to perform such acts.

(4) Upon request, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 169, Ch. 42, L. 1997; amd. Sec. 6, Ch. 88, L. 2009.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-503. Agreements with railroad retirement board. (1) The department is authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities.

(2) The department shall make available to the railroad retirement board the records of the department that the railroad retirement board considers necessary or desirable for the administration of the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq.

(3) The department may charge reasonable fees commensurate with the costs of producing and providing information pursuant to this section. The department shall deposit the fees in the department's state special revenue account.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981; amd. Sec. 170, Ch. 42, L. 1997; amd. Sec. 56, Ch. 2, L. 2009; amd. Sec. 8, Ch. 25, L. 2009.

39-51-504. Reciprocal benefit arrangements. (1) The department is authorized to enter into reciprocal benefit arrangements with the appropriate agencies of other states, the federal government, or both.

(2) (a) Subject to subsection (2)(b), services performed by an individual for a single employing unit that are customarily performed in more than one state may be considered to be performed entirely within any one of the states in which:

(i) any part of the services is performed;

(ii) the individual maintains the individual's residence; or

(iii) the employing unit maintains a place of business.

(b) An election made by the employing unit and approved by the department must be in place and must designate in which of the states described in subsection (2)(a) the services must be considered to have been performed.

(3) The department shall participate in any arrangements, approved by the U.S. secretary of labor, for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter with the individual's wages and employment covered by the unemployment laws of another state or the federal government provided that the arrangements contain provisions:

(a) for the application of the base period of a single state to a claim involving the combining of an individual's wages and employment covered by the laws of two or more states;

(b) that the combining of wages will not involve the duplicate use of wage credits;

(c) that the other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for the portion of benefits paid under this chapter upon the basis of the wages or services as the department finds will be fair and reasonable with regard to all affected interests; and

(d) that the reimbursements payable must be considered benefits for the purposes of this chapter.

(4) Wages or services for which an individual may become entitled to benefits under the unemployment insurance laws of another state or the federal government must be considered wages for employment for benefit purposes by employers.

(5) The department is authorized to issue reimbursements to other state or federal agencies, to receive reimbursements from other state or federal agencies, and to deposit the

reimbursements in or withdraw the reimbursements from the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 25, L. 2009.

39-51-505. Access to governmental records. Upon request by the department, a state or local government agency, including the units of the university system, or a state or local government official or employee shall cooperate by supplying the department with information that would aid in the administration of this chapter. The department may use the information only for administration of this chapter. Any confidential information provided to the department remains confidential and may not be published or open to public inspection unless specifically required in the performance of the employee's duties.

History: En. Sec. 17, Ch. 195, L. 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Part 6
Records and Reports

Part Cross-References

General definitions, 39-51-201.

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by the individual for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1529, Ch. 56, L. 2009.

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department must be kept on the basis of wages paid. For purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, may be assigned to periods of time determined in accordance with rules adopted by the department.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 618, L. 1989; amd. Sec. 6, Ch. 373, L. 1991; amd. Sec. 10, Ch. 25, L. 2009.

39-51-603. Employing unit to keep records and make reports — confidentiality — rules. (1) Each employing unit shall keep true and accurate work records containing the information that the department may prescribe. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employing unit that maintains its records outside Montana shall furnish a copy of those records to the department at the employing unit's expense or shall pay the department for the costs associated with conducting the audit outside Montana.

(2) The department and the presiding officer of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the department considers necessary for the effective administration of this chapter.

(3) Information obtained from any individual under this chapter must, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and may not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or the claimant's legal representative at a hearing before the board or appeal tribunal must be supplied with information from the records to the extent necessary for the proper presentation of the claim.

(4) In order to prevent the misuse of personal and other sensitive information collected by the department in the administration of the unemployment insurance laws, the department shall adopt rules providing for confidentiality of unemployment insurance information, including the circumstances and conditions under which information may be disclosed to appropriate persons and government agencies. The rules must be consistent with federal requirements regarding confidentiality and disclosure of unemployment insurance information.

(5) (a) Any employee or member of the department or any other state or local government employee who violates any provision of this section shall be fined not less than $20 or more than $200 or shall be imprisoned for not longer than 90 days, or both.

(b) Any person other than those described in subsection (5)(a) who receives information from the department may use the disclosed information only for purposes authorized by law. A person who violates the provisions of this subsection (5)(b) is subject to the penalties provided for in subsection (5)(a).

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 373, L. 1991; amd. Sec. 5, Ch. 195, L. 1995; amd. Sec. 7, Ch. 88, L. 2009.

39-51-604. Repealed. Sec. 1, Ch. 122, L. 2005; Sec. 13, Ch. 448, L. 2005.

History: En. Sec. 3, Ch. 573, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

Parts 7 through 10 reserved

Part 11
Employer Contributions

Part Cross-References

General definitions, 39-51-201, 39-51-1121.

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not equal or exceed the amount of wages required under 39-51-202 to be considered an employer subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in 39-51-202(4) or (5) shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 234, L. 1987; amd. Sec. 8, Ch. 373, L. 1991.

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

39-51-1103. Contributions by employers required — payments in lieu of contributions authorized for certain employers. (1) Contributions accrue and become payable by each employer for each calendar year in which the employer is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during the calendar year.

(2) The contributions become due and must be paid by each employer to the department for the fund in accordance with rules adopted by the department and may not be deducted in whole or in part from the wages of individuals employed by the employer.

(3) In the payment of any contributions, a fractional part of a cent must be disregarded unless it amounts to one-half cent or more, in which case it must be increased to 1 cent.

(4) Nonprofit organizations, defined in section 501(c)(3) of the Internal Revenue Code and that are exempt from tax under section 501(a) of the Internal Revenue Code, may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

(6) An Indian tribe may make a separate election to make payments in lieu of contributions for each tribal unit and may elect to combine all or some tribal units into group reimbursement accounts.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 125, L. 1985; amd. Sec. 4, Ch. 200, L. 2001.

39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to taxes, penalties, and interest owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all taxes, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all taxes, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 373, L. 1991.

39-51-1105. Liability for taxes, penalties, and interest owed. (1) The officer of a corporation whose responsibility it is to pay the taxes, penalties, and interest, as provided by 39-51-404, 39-51-1103(1) and (2), 39-51-1125(1), and 39-51-1301, is liable for the taxes, penalties, and interest due.

(2) (a) The department shall consider the officer of the corporation individually liable with the corporation for filing reports and unpaid taxes, penalties, and interest upon a determination that the corporate officer:

(i) possessed the responsibility to file reports and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation to direct the filing of reports or payment of other corporate obligations and exercised the responsibility that resulted in failure to file reports or pay taxes due.

(b) The department is not limited to considering the elements set forth in subsection (2)(a) to establish individual liability and may consider any other available information.

(3) The liability imposed upon an individual by this section remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under 11 U.S.C. 727. The individual is liable for the unpaid amount of taxes, penalties, and interest.

(4) In the case of a limited liability company treated as a partnership pursuant to 39-51-207, the liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to each member and to each manager, if any.

(5) In the case of a limited liability company that is not treated as a partnership pursuant to 39-51-207, liability for unemployment insurance taxes, penalties, and interest owed extends jointly and severally to the managers and members of the limited liability company.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 373, L. 1991; amd. Sec. 12, Ch. 529, L. 1995; amd. Sec. 21, Ch. 491, L. 1997; amd. Sec. 8, Ch. 52, L. 2007; amd. Sec. 11, Ch. 25, L. 2009; amd. Sec. 8, Ch. 88, L. 2009.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including the amount specified in this section by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of 80% of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979; amd. Sec. 2, Ch. 371, L. 1985.

39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-71-415.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, the charging of benefit payments to employers, or other contribution-related issues must be issued by the department and is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as provided in 39-51-2403 through 39-51-2410.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 125, L. 1985; amd. Sec. 6, Ch. 234, L. 1987; amd. Sec. 4, Ch. 314, L. 1987; amd. Sec. 1, Ch. 302, L. 1989; amd. Sec. 7, Ch. 195, L. 1995; amd. Sec. 22,

Ch. 491, L. 1997; amd. Sec. 5, Ch. 36, L. 1999; amd. Sec. 9, Ch. 442, L. 1999; amd. Secs. 7, 8, Ch. 597, L. 2003; amd. Sec. 9, Ch. 52, L. 2007.

39-51-1110. Refunds to employers. (1) If an employer claims an adjustment or the department determines through an examination of the employer's account that the employer has overpaid the amount due, the amount of the overpayment must be applied to future unemployment insurance obligations or must be refunded to the employer. The credit or refund may be allowed only if the claim is filed, or the determination is made, within a 5-year period after the date on which any taxes, penalty, or interest became due or within 1 year from the date the payment is made, whichever is later. The department shall credit or refund the amount to the employer, without interest.

(2) If the department determines that an employer has paid taxes to this state under this chapter but the taxes should have been paid to another state under a similar act of the other state, a transfer of the taxes to the other state must be made upon discovery or, upon proof of payment that the other state has been fully paid, then a refund to the employer must be made upon application without limitation of time.

(3) If this chapter is not certified by the secretary of labor under 26 U.S.C. 3304 for any year, then refunds must be made of all taxes required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 373, L. 1991; amd. Sec. 171, Ch. 42, L. 1997; amd. Sec. 23, Ch. 491, L. 1997; amd. Sec. 6, Ch. 466, L. 2005.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in part 12 and this part, the following definitions apply:

(1) "Computation date" means the 12-month reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject to this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject to this chapter for the 3 federal fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "Federal fiscal year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 federal fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "State fiscal year" means the four consecutive calendar quarters ending on June 30.

(9) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404 for each calendar year. Payment of contributions and of assessments under 39-51-404 may apply only to wages paid up to and including the amount specified in 39-51-1108.

History: En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 234, L. 1987; amd. Sec. 7, Ch. 618, L. 1989; amd. Sec. 20, Ch. 373, L. 1991; amd. Sec. 3, Ch. 362, L. 2007; amd. Sec. 12, Ch. 25, L. 2009.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: **En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: **En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103, tribal unit, or governmental entity electing to become liable for payments in lieu of contributions shall file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election must be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103, tribal unit, or governmental entity that has been paying contributions for at least 2 tax years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the tax year for which the change is effective.

History: **En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 200, L. 2001.**

39-51-1125. Computation of payments in lieu of contributions. (1) Employers electing to make payments in lieu of contributions under 39-51-1103 shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. Governmental entities shall pay the full amount of extended benefits.

(2) When the base period wages of an individual include wages from more than one employer, the amount to be paid into the fund with respect to the benefits paid to the individual must be prorated among the liable employers in proportion to the wages paid to the individual by each employer during the base period.

(3) The amount of payment required from employers must be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency must be assessed to employers as specified in 39-51-1301.

(4) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual without a reduction in hours or wages.

History: **En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 234, L. 1987; amd. Sec. 21, Ch. 373, L. 1991; amd. Sec. 13, Ch. 25, L. 2009.**

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization, tribal unit, or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of an election by filing a written notice with the department not later than 30 days prior to the beginning of the tax year for which the termination is effective.

(2) If a nonprofit organization, tribal unit, or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next tax year, and the termination is effective for that and the next tax year.

History: **En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 200, L. 2001.**

39-51-1127 through 39-51-1130 reserved.

39-51-1131. Terminated. Sec. 12, Ch. 371, L. 1985.

History: **En. Sec. 1, Ch. 371, L. 1985.**

39-51-1132. Liability of tribal units — cancellation for failure to make payments. (1) Each tribal unit of an Indian tribe is jointly and severally liable for all contributions or payments in lieu of contributions, including those under subsection (2), owed by any other tribal unit of the same Indian tribe.

(2) (a) An Indian tribe and its tribal units that make contributions are liable for reimbursing the department for 50% of any extended benefits paid pursuant to Title 39, chapter 51, part 25, that are chargeable to the account of the Indian tribe or one of its tribal units.

(b) An Indian tribe and its tribal units that elect to make payments in lieu of contributions are liable for reimbursing the department for 100% of any extended benefits paid pursuant to Title 39, chapter 51, part 25, that are chargeable to the account of the Indian tribe or one of its tribal units.

(3) (a) The failure of an Indian tribe or any of its tribal units to make the required payments under this chapter within 90 days of being given notice that the Indian tribe or tribal unit is delinquent in payment cancels the participation of the Indian tribe and all of its tribal units in the unemployment insurance program provided by this chapter and removes service provided to the Indian tribe and all of its tribal units from being considered as employment, within the meaning of 39-51-203.

(b) Payment in full of amounts that have been delinquent for more than 90 days reinstate the participation of the Indian tribe and its tribal units in Montana's unemployment insurance system, and service to the Indian tribe and its tribal units once again is considered to be employment within the meaning of 39-51-203. However, upon reinstatement, the Indian tribe and all of its tribal units no longer have the option of electing to make payments in lieu of contributions and, pursuant to 39-51-1126, are required to make contributions as provided in this chapter.

History: En. Sec. 1, Ch. 200, L. 2001.

Part 12
Employer Classification and Experience Rating

Part Cross-References

General definitions, 39-51-201, 39-51-1121.

39-51-1201. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1202. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1203. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1204. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part).

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. (1) The department shall by rule provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Except as provided in subsection (2), the notification is final for all purposes unless the employer files a written request with the department for a redetermination or hearing on the classification and rate of contribution within 30 days after the mailing date of the notice. The department may extend the 30-day period for good cause.

(2) The department may make changes in classification and rate of contribution upon an oral request for redetermination from the employer if the department finds that the department has made an error.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 95, L. 2003; amd. Sec. 7, Ch. 466, L. 2005.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

39-51-1212. Experience rating for governmental entities. (1) The rates of governmental entities who have accumulated experience rating credits must be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods that are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates fixed using the median so that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(2) New governmental entities electing to pay contributions must be assigned the median rate for the year in which they become subject.

(3) The minimum rate may not be less than 0.06% and the maximum rate may not be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(4) If benefit charges exceed contributions paid in the last 2 completed state fiscal years, governmental entities' rates must be adjusted by increasing all rates to the next higher schedule.

(5) The computed rate is effective July 1 of each year.

(6) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(7) The department may relieve benefit charges paid by a governmental employer with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual without a reduction in hours or wages.

History: En. Sec. 9, Ch. 685, L. 1979; amd. Sec. 1, Ch. 50, L. 1989; amd. Sec. 22, Ch. 373, L. 1991; amd. Sec. 4, Ch. 362, L. 2007; amd. Sec. 14, Ch. 25, L. 2009; amd. Sec. 5, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 in (7) substituted "The department may relieve benefit charges paid by a governmental employer" for "A payment may not be required under this section". Amendment effective October 1, 2011.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 federal fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the federal fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the federal fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class number listed in the table that represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, those employers are included in and assigned the contribution rate specified for the class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount, the experience factor, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest 1/100 of 1%.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981; amd. Sec. 3, Ch. 371, L. 1985; amd. Sec. 9, Ch. 234, L. 1987; amd. Sec. 23, Ch. 373, L. 1991; amd. Sec. 6, Ch. 60, L. 1997; amd. Sec. 3, Ch. 399, L. 1999; amd. Sec. 15, Ch. 25, L. 2009.

39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307;

(e) if the base period employer is ordered to military service, as defined in 10-1-1003;

(f) if benefits are paid to an employee laid off as the result of the return to work of a permanent employee who:

(i) was called to military service, as defined in 10-1-1003; and

(ii) had completed 4 or more weeks of military service and exercised reemployment rights under Title 10, chapter 1, part 10; or

(g) if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking pursuant to 39-51-2111.

History: **En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981; amd. Sec. 2, Ch. 50, L. 1989; amd. Sec. 24, Ch. 373, L. 1991; amd. Sec. 1, Ch. 86, L. 1993; amd. Sec. 25, Ch. 381, L. 2005; amd. Sec. 10, Ch. 52, L. 2007; amd. Sec. 6, Ch. 123, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 123 in (2) substituted "The account of an employer with an experience rating as provided in 39-51-1213 may not be charged" for "A charge may not be made to the account of a covered employer"; inserted (2)(g) regarding domestic violence, sexual assault, or stalking; and made minor changes in style. Amendment effective October 1, 2011.

39-51-1215. Maintenance of experience rating records. An experience rating record must be maintained for each covered employer. The record is credited with all contributions that the covered employer has paid since October 1, 1981. The record must also be charged with the amount of benefits paid that are chargeable to the covered employer's account since October 1, 1981. This section does not grant any covered employer or individual in the covered employer's service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: **En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981; amd. Sec. 4, Ch. 371, L. 1985; amd. Sec. 1530, Ch. 56, L. 2009.**

39-51-1216. Experience rating record voided when account inactive. An employer who has not had covered employment or whose coverage has been terminated because the employer has ceased to do business for 5 consecutive years is considered a new employer and may not be credited with the employer's previous experience for the purpose of computing any future "experience factor".

History: **En. Sec. 13, Ch. 685, L. 1979; amd. Sec. 1531, Ch. 56, L. 2009; amd. Sec. 9, Ch. 88, L. 2009.**

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of October 31 prior to the rate year to total wages in covered employment for the 12-month period ending June 30 prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as a new employer must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may a new employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification.

History: **En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981; amd. Sec. 3, Ch. 50, L. 1989; amd. Sec. 25, Ch. 373, L. 1991.**

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES - Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.12	1.32	1.52	1.72

Rate Class	Contribution Rates for Eligible Employers			
1	0.00%	0.00%	0.02%	0.22%
2	0.00	0.02	0.22	0.42
3	0.02	0.22	0.42	0.62
4	0.22	0.42	0.62	0.82
5	0.42	0.62	0.82	1.02
6	0.62	0.82	1.02	1.22
7	0.82	1.02	1.22	1.42
8	1.02	1.22	1.42	1.62
9	1.22	1.42	1.62	1.82
10	1.42	1.62	1.82	2.02
Rate Class	Contribution Rates for Deficit Employers			
1	2.92%	3.12%	3.32%	3.52%
2	3.12	3.32	3.52	3.72
3	3.32	3.52	3.72	3.92
4	3.52	3.72	3.92	4.12
5	3.72	3.92	4.12	4.32
6	3.92	4.12	4.32	4.52
7	4.12	4.32	4.52	4.72
8	4.32	4.52	4.72	4.92
9	4.52	4.72	4.92	5.12
10	6.12	6.12	6.12	6.12

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X	Sched. XI
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.0025)	(....)
1.92	2.12	2.32	2.52	2.72	2.92	3.12
Contribution Rates for Eligible Employers						
0.42%	0.62%	0.82%	1.02%	1.22%	1.42%	1.62%
0.62	0.82	1.02	1.22	1.42	1.62	1.82
0.82	1.02	1.22	1.42	1.62	1.82	2.02
1.02	1.22	1.42	1.62	1.82	2.02	2.22
1.22	1.42	1.62	1.82	2.02	2.22	2.42
1.42	1.62	1.82	2.02	2.22	2.42	2.62
1.62	1.82	2.02	2.22	2.42	2.62	2.82
1.82	2.02	2.22	2.42	2.62	2.82	3.02
2.02	2.22	2.42	2.62	2.82	3.02	3.22
2.22	2.42	2.62	2.82	3.02	3.22	3.42
Contribution Rates for Deficit Employers						
3.72%	3.92%	4.12%	4.32%	4.52%	4.72%	4.92%
3.92	4.12	4.32	4.52	4.72	4.92	5.12
4.12	4.32	4.52	4.72	4.92	5.12	5.32
4.32	4.52	4.72	4.92	5.12	5.32	5.52
4.52	4.72	4.92	5.12	5.32	5.52	5.72
4.72	4.92	5.12	5.32	5.52	5.72	5.92
4.92	5.12	5.32	5.52	5.72	5.92	6.12
5.12	5.32	5.52	5.72	5.92	6.12	6.12
5.32	5.52	5.72	5.92	6.12	6.12	6.12
6.12	6.12	6.12	6.12	6.12	6.12	6.12

History: En. Sec. 15, Ch. 685, L. 1979; amd. Sec. 5, Ch. 371, L. 1985; amd. Sec. 26, Ch. 373, L. 1991; amd. Sec. 4, Ch. 399, L. 1999; amd. Sec. 1, Ch. 432, L. 2003; amd. Sec. 8, Ch. 466, L. 2005; amd. Sec. 11, Ch. 52, L. 2007; amd. Sec. 5, Ch. 362, L. 2007.

39-51-1219. Procedures for substitution, merger, transfer, or acquisition of employer account by successor employing unit — prohibitions and penalties — definitions. (1) (a) If an employer in any manner succeeds to or acquires all or a portion of the trade or business of another employer or transfers all or a portion of the employer's trade or business to another employer and both employers are under substantially common ownership, management, or control at the time of the succession, acquisition, or transfer, the experience rating record attributable to the predecessor employer must be transferred to and combined with the experience rating record of the successor employer.

(b) In the case of a partial transfer of a trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. The portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of the transfer.

(c) Whenever a transfer involves only a portion of the experience rating record and the predecessor employer or successor employer fails to supply the required payroll information to the department within 10 days after notification, the transfer must be based on estimates of the applicable payrolls.

(d) Any successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(e) A successor employer must be notified by the department in writing of the transfer of the experience rating record, and unless the successor employer appeals the transfer within 30 days of the date on which the notice was mailed, the successor employer's right to appeal the transfer is waived.

(2) (a) If an employer transfers, succeeds to, or acquires all or a portion of the trade or business of a covered employer and the employers are not under substantially common ownership, management, or control, the predecessor employer and the successor employer have the option to transfer the applicable portion of the experience rating record from the predecessor employer to the successor employer if that portion of the trade or business is continued by the successor employer.

(b) In order to make the transfer, a joint application for the transfer of the experience rating record must be made by the predecessor employer and the successor employer within 90 days of the acquisition and approval by the department.

(c) In the case of a complete transfer of the trade or business, all of the experience rating record of the predecessor employer is transferred to the successor employer.

(d) In the case of a partial transfer of the trade or business, the portion of the experience rating record transferred from the predecessor employer to the successor employer must be based on the portion of the trade or business transferred. This portion must be determined in the same ratio as the payroll transferred to the successor employer in the 4 reported calendar quarters immediately preceding the date of transfer.

(e) A successor employer who was not an employer on the date of acquisition becomes a covered employer as of that date.

(f) The 90-day period for filing the joint application may be extended at the discretion of the department.

(3) (a) If the successor employer was a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and if:

(i) the employers are not under substantially common ownership, management, or control at the time of acquisition, the successor employer's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor employer and successor employer; or

(ii) the employers were under substantially common ownership, management, or control at the time of acquisition, the successor employer's experience rate must be combined with the predecessor employer's experience rate and must be recalculated and become effective at the beginning of the calendar quarter in which the acquisition occurred.

(b) If the successor employer was not a covered employer prior to the date of the acquisition of all or a portion of the predecessor employer's trade or business and the employers are not under substantially common ownership, management, or control, upon joint application by the employers, the successor employer's rate is the rate assigned to the predecessor employer as of the date of acquisition. If there was more than one predecessor employer, the successor employer's rate must be computed based on the combined experience of the predecessor employers and becomes effective immediately after the date of acquisition and remains in effect for the balance of the rate year.

(4) The transfer of all or part of an employer's workforce to another employer must be considered a transfer of a trade or business if, as a result of the workforce transfer, the transferring employer is not any longer performing the trade or business with respect to the transferred workforce and the trade or business is performed by the employer to which the workforce is transferred.

(5) (a) The experience rating record of a predecessor trade or business may not be transferred to a person acquiring the trade or business if:

(i) the person is not otherwise an employer at the time of the acquisition; and

(ii) the department finds that the person acquired the trade or business solely or primarily for the purpose of obtaining a lower rate of contributions.

(b) A person subject to the provisions of subsection (5)(a) must be assigned the applicable new employer rate pursuant to 39-51-1217.

(6) Factors that the department may consider in determining if a person acquired a trade or business solely or primarily for the purpose of obtaining a lower rate of contributions include but are not limited to:

(a) the cost of acquisition;

(b) whether the person continued the trade or business operation;

(c) the length of time that the trade or business operation was continued after acquisition; and

(d) whether a substantial number of new employees were to perform duties unrelated to the trade or business operations conducted prior to the acquisition.

(7) A person who knowingly violates, attempts to violate, or provides advice on violating the provisions of this section is subject to the following penalties:

(a) If the person is an employer, the employer shall be assessed a penalty equal to 6% of the employer's average annual taxable wages used in computing the employer's most recent year's experience rating record. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(b) If the person is not an employer, the person is subject to a civil penalty of not more than $5,000. The penalty must be deposited in the penalty and interest account established in 39-51-1301(4).

(c) In addition to the penalties provided for in subsections (7)(a) and (7)(b), a person who violates a provision of this section:

(i) is subject to any other penalties prescribed by this chapter;

(ii) may be subject to a criminal penalty pursuant to 39-51-3204; and

(iii) may be charged with any other applicable criminal violations provided by law.

(8) For the purposes of this section, the following definitions apply:

(a) "Knowingly" means having actual knowledge of, acting with deliberate ignorance of, or reckless disregard for the prohibitions established in this section.

(b) "Person" includes an individual, trust, estate, partnership, association, company, or corporation.

(c) "Trade or business" includes an employer's workforce.

(9) The department shall establish procedures to identify the transfer or acquisition of a trade or business for the purposes of this section.

(10) This section must be interpreted and applied in a manner that meets the minimum requirements contained in any guidance or regulations issued by the United States department of labor.

History: En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 234, L. 1987; amd. Sec. 55, Ch. 83, L. 1989; amd. Sec. 2, Ch. 171, L. 1993; amd. Sec. 9, Ch. 466, L. 2005.

Part 13
Unpaid Contributions

Part Cross-References
General definitions, 39-51-201.

39-51-1301. Penalty and interest on past-due reports and payments. (1) Failure to file reports and make payments in a timely manner, as required under 39-51-404, 39-51-603, 39-51-1103, and 39-51-1125, may subject an employer to penalty and interest, as provided in subsection (2).

(2) The department may assess penalties and interest under this section as follows:

(a) a penalty of $25 for the failure to file reports or make payments in a timely manner;

(b) in addition to the late penalty provided in subsection (2)(a), a penalty of $50 if the department issues a subpoena or makes a summary or jeopardy assessment, as provided in 39-51-1302, as the result of an employer's refusal or failure to provide requested information;

(c) in addition to the penalties in subsections (2)(a) and (2)(b), a penalty of $100 for failure to comply with a subpoena; and

(d) interest at the rate of 1.5% a month on any amounts owed to the department under this subsection (2) that are not paid in a timely manner.

(3) The department may waive all or any portion of any penalties and interest assessed under subsection (2).

(4) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations must be deposited in that account. Money deposited in that account and appropriated to the department may be used by the department only to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983; amd. Sec. 1, Ch. 13, Sp. L. June 1986; amd. Sec. 11, Ch. 234, L. 1987; amd. Sec. 12, Ch. 373, L. 1991; amd. Sec. 2, Ch. 639, L. 1991; amd. Sec. 8, Ch. 195, L. 1995; amd. Sec. 24, Ch. 491, L. 1997; amd. Sec. 52, Ch. 427, L. 1999; amd. Sec. 3, Ch. 95, L. 2003; amd. Sec. 9, Ch. 597, L. 2003; amd. Sec. 10, Ch. 466, L. 2005; amd. Sec. 10, Ch. 88, L. 2009.

Cross-References
Uniform penalty and interest assessments for violation of tax provisions, 15-1-216.

39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If an employer fails to file a report or return as required under this chapter or the rules adopted by the department within the time specified or if the employer's records are inaccurate or are incomplete when an employer has filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by estimating the report and determining the amount of taxes due and owing to the fund upon the basis of any information that the department may be able to obtain. The tax must be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making a summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail sent to the last-known mailing address or place of business operated by the employer. The assessment is final unless:

(a) the employer protests the assessment in writing within 15 days after service of the notice;

(b) the employer files within 15 days after service of the notice a correct, signed, and sworn report and statement as provided for by this chapter and the rules of the department; or

(c) the department has good cause to amend the summary or jeopardy assessment, in which case the department shall notify the employer in the manner provided for in this subsection (2).

(3) Upon written protest being filed by an employer, the department may reconsider the summary or jeopardy assessment, and if the department redetermines the assessment, it shall notify the employer of its redetermination and the reasons for the redetermination. A summary or jeopardy assessment or redetermination by the department under this subsection is final unless the employer submits a written appeal within 10 days in the same manner as provided in 39-51-1109.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 373, L. 1991; amd. Sec. 16, Ch. 25, L. 2009; amd. Sec. 1532, Ch. 56, L. 2009.

39-51-1303. Collection of unpaid taxes. (1) The department may enter into payment agreements with an employer to resolve unpaid taxes, penalty, and interest. Penalty or interest, or both penalty and interest, may be abated if an acceptable payment agreement is entered into and followed. Failure to meet the terms of the payment agreement voids the penalty and interest abatement, and the penalty and interest must be recomputed from the due date of the unpaid tax.

(2) If, after due notice, any employer, liable corporate officer, liable member or manager of a limited liability company referred to in 39-51-1105, or partner in a limited liability partnership defaults in any payment of taxes, penalties, or interest on the taxes and penalties, the department may initiate a civil action in the name of the state to collect the amount due, and the employer, liable corporate officer, liable member or manager of a limited liability company, or partner in a limited liability partnership adjudged in default shall pay the costs of the action.

(3) An action for the collection of taxes due must be brought within 5 years from the date the original or amended report was filed or the assessment became due, whichever is later, or the action is barred.

(4) The department may pursue its remedy under 39-51-1304 or this section, or both.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 111, L. 1983; amd. Sec. 1, Ch. 514, L. 1985; amd. Sec. 12, Ch. 234, L. 1987; amd. Sec. 14, Ch. 373, L. 1991; amd. Sec. 9, Ch. 195, L. 1995; amd. Sec. 9, Ch. 529, L. 1995; amd. Sec. 7, Ch. 60, L. 1997; amd. Sec. 25, Ch. 491, L. 1997; amd. Sec. 11, Ch. 466, L. 2005.

39-51-1304. Lien for payment of unpaid taxes — levy and execution. (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105, or against a partner in a limited liability partnership. The judgment arises at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. When issued, a notice of levy has the same force and effect as a writ of execution. A levy upon earnings continues in effect for 120 days or until the judgment is satisfied, whichever occurs first. The levy applies to all pay periods beginning during the 120-day period. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest from the:

(a) employer;

(b) liable corporate officer;

(c) liable member or manager of a limited liability company referred to in 39-51-1105; or

(d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 514, L. 1985; amd. Sec. 13, Ch. 234, L. 1987; amd. Sec. 1, Ch. 487, L. 1987; amd. Sec. 15, Ch. 373, L. 1991; amd. Sec. 10, Ch. 195, L. 1995; amd. Sec. 10, Ch. 529, L. 1995; amd. Sec. 172, Ch. 42, L. 1997; amd. Sec. 8, Ch. 60, L. 1997; amd. Sec. 26, Ch. 491, L. 1997; amd. Sec. 2, Ch. 397, L. 2001; amd. Sec. 14, Ch. 515, L. 2001.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

39-51-1305. Priority of payment of taxes due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137; amd. Sec. 11, Ch. 125, L. 1985; amd. Sec. 16, Ch. 373, L. 1991.

39-51-1306. Reciprocity with other states for collection of unpaid taxes. (1) The courts of this state shall recognize and enforce liabilities for unemployment taxes and any other special assessments imposed by other states that extend a like comity to this state.

(2) The department may sue in the courts of any other jurisdiction that extends comity to collect unemployment taxes, penalties, and interest due this state. The officials of other states that by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect the taxes and any other special assessments and interest and penalties, if any, due that state. In any case brought for another state, the administrator may through the administrator's attorney institute and conduct the suit for the other state.

(3) Venue of proceedings under this section must be the same as for actions to collect delinquent taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any state under the great seal of that state attesting the authority of the official to collect unemployment insurance taxes and any other special assessments, penalties, and interest is conclusive evidence of that authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 17, Ch. 373, L. 1991; amd. Sec. 1533, Ch. 56, L. 2009.

39-51-1307. Collection of unpaid taxes, penalties, and interest by offset. (1) To collect delinquent taxes, penalties, and interest, the department may direct the offset of any funds due the debtor from the state, except wages subject to the provisions of 25-13-614 and retirement benefits. The department, through the department of revenue, shall provide the debtor with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than

the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.

(3) The department may file a claim for state funds on behalf of the employer if a claim is required before funds are available for offset.

(4) The debt need not be determined to be uncollectible as provided for in 39-51-3207 before being transferred for offset.

History: **En. Sec. 13, Ch. 529, L. 1995; amd. Sec. 49, Ch. 7, L. 2001.**

Parts 14 through 20 reserved

Part 21
Benefit Eligibility

Part Cross-References

General definitions, 39-51-201.

39-51-2101. Total unemployment — when. (1) An individual is considered to be totally unemployed in any week during which the individual:

(a) did not perform any work in employment and did not earn any wages for employment; or

(b) except as provided in subsection (2):

(i) due to a lack of work, worked fewer than the hours that are typically worked in employment by the individual; and

(ii) earned wages payable to the individual that are less than two times the individual's weekly benefit amount.

(2) An individual is not considered to be unemployed in any week in which the individual works at least 40 hours in employment.

History: **En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1); amd. Sec. 14, Ch. 234, L. 1987; amd. Sec. 1, Ch. 400, L. 1999; amd. Sec. 11, Ch. 88, L. 2009; amd. Sec. 7, Ch. 123, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 123 in (1)(b) inserted exception clause; in (1)(b)(i) substituted current text for "worked less than the customary hours that are normal for the individual's particular occupation due to a lack of work and provided that the"; in (1)(b)(ii) inserted "earned"; inserted (2) regarding when individual is not considered unemployed; and made minor changes in style. Amendment effective October 1, 2011.

39-51-2102. Commencement of week of unemployment. An individual's week of unemployment commences only after the individual files a claim for unemployment insurance benefits with the unemployment insurance division and has registered for work with the individual's local job service, except as the department may by rule otherwise prescribe.

History: **En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 466, L. 2005.**

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: **En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.**

39-51-2104. General benefit eligibility conditions. (1) An unemployed individual, including an alien entitled to benefits under the provisions of 39-51-2110, is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(a) has filed a claim and has filed continued claims in accordance with rules that the department may prescribe;

(b) is able to work, is available for work, and is seeking work. An individual may not place limitations on the individual's availability that would constitute a withdrawal from the labor market. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is because of an illness or disability that occurs after the claimant has filed or reopened a claim for unemployment insurance benefits and suitable work has not been offered to the claimant after the beginning of the illness or disability.

(c) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(i) if benefits have been paid for that week;

(ii) unless the individual was eligible for benefits during the week;

(iii) unless it occurs within the benefit year of the claimant;

(iv) unless it occurs after benefits first could become payable to any individual under this chapter.

(d) has registered for work with the individual's local job service office unless the individual is excused by department rule from registering for work.

(2) (a) Except as provided in subsection (2)(b), if an individual is unavailable for work for less than 3 days within a week for which work is available, the individual must be paid the weekly benefit amount reduced by one-fifth of that amount for each day or part of a day that the individual is unavailable for work.

(b) If the individual is unavailable for work for 3 days or more, or part of each of 3 days or more, within a week for which work is available, the individual must be considered unavailable for work for the entire week and is not eligible to receive benefits for the week.

(3) (a) The department shall establish a profiling system to identify individuals who are likely to exhaust their regular benefits and who are in need of reemployment services.

(b) In addition to the requirements listed in subsection (1), an individual identified pursuant to subsection (3)(a) may be required to participate in reemployment services in order to be eligible for unemployment benefits.

(c) The requirement for participation in reemployment services may be waived if the department determines that:

(i) the individual has completed reemployment services; or

(ii) the individual's failure to participate in reemployment services is justifiable.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 125, L. 1985; amd. Sec. 6, Ch. 371, L. 1985; amd. Sec. 1, Ch. 404, L. 1993; amd. Sec. 11, Ch. 195, L. 1995; amd. Sec. 13, Ch. 466, L. 2005; amd. Sec. 12, Ch. 88, L. 2009.

39-51-2105. Qualifying wages. To qualify for benefits, an individual must have been paid total wages for employment in the base period in an amount:

(1) not less than 1 ½ times the wages earned in the calendar quarter in which wages were the highest during the base period; however, the total wages in the base period must be equal to or greater than 7% of the average annual wage described in 39-51-2201; or

(2) equal to or greater than 50% of the average annual wage described in 39-51-2201.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979; amd. Sec. 1, Ch. 153, L. 1987; amd. Sec. 15, Ch. 234, L. 1987; amd. Sec. 1, Ch. 485, L. 1991.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.) or for services performed for an employer as defined in that act are not included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: **En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 173, Ch. 42, L. 1997.**

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year shall perform services for remuneration following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of the individual's high quarter of the individual's second benefit year or six times the individual's weekly benefit amount of that same year.

History: **En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e); amd. Sec. 29, Ch. 373, L. 1991; amd. Sec. 1534, Ch. 56, L. 2009.**

39-51-2108. Payment of benefits based on services in public, charitable, or educational organizations. (1) Benefits based on services in employment defined in 39-51-203(5) and (6) are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other services subject to this chapter, except that benefits based on services in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs the services in the first of the academic years or terms and if the individual has a contract to perform services or a reasonable assurance of performing services in any instructional, research, or principal administrative capacity for any educational institution in the second of the academic years or terms.

(2) Benefits based on services in any other capacity for an educational institution must be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section must be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) to an individual who performed the services for an educational institution while in the employ of an educational service agency must be denied as specified in subsections (1) through (3). The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the service to one or more educational institutions.

History: **En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979; amd. Sec. 1, Ch. 1, L. 1985; amd. Sec. 27, Ch. 491, L. 1997; amd. Sec. 5, Ch. 61, L. 1999.**

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

39-51-2110. Payment of benefits to aliens. (1) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of the Immigration and Nationality Act, 8 U.S.C. 1152.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to the individuals because of the individuals' alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h); amd. Sec. 18, Ch. 373, L. 1991; amd. Sec. 3, Ch. 171, L. 1993; amd. Sec. 174, Ch. 42, L. 1997.

39-51-2111. Unemployment benefits for victims of domestic violence, sexual assault, or stalking. (1) (a) An individual who is otherwise eligible for benefits may not be denied benefits because the individual left work or was discharged because of circumstances resulting from the individual or a child of the individual being a victim of domestic violence, a sexual assault, or stalking or the individual left work or was discharged because of an attempt on the individual's part to protect the individual or the individual's child from domestic abuse, a sexual assault, or stalking.

(b) The account of an employer with an experience rating as provided in 39-51-1213 may not be charged for the payment of benefits to an individual who left work or was discharged because of circumstances resulting from domestic violence, a sexual assault, or stalking as provided for in subsection (1)(a).

(c) An individual may not receive more than 10 weeks of unemployment benefits for the 12-month period after filing a claim under the provisions of this section. The provisions of this section do not affect the rights of an individual to receive unemployment insurance benefits that the individual is entitled to under other provisions of state law.

(2) For the purposes of subsection (1), an individual must be treated as being a victim of domestic violence, a sexual assault, or stalking if the individual provides one or more of the following:

(a) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction;

(b) a police record documenting the domestic violence, sexual assault, or stalking;

(c) medical documentation of domestic violence or a sexual assault; or

(d) other documentation or certification of domestic violence, a sexual assault, or stalking provided by a social worker, clergy member, shelter worker, or professional person, as defined in 53-21-102, who has assisted the individual in dealing with domestic violence, a sexual assault, or stalking.

(3) An individual who is otherwise eligible for benefits under this section becomes ineligible if the individual remains in or returns to the abusive situation that caused the individual to leave work or be discharged.

(4) The department shall provide a report to the legislature, as provided in 5-11-210, regarding the benefits applied for and granted under this section, including a summary of the demographics of applicants for and recipients of the benefits and the average and total cost of benefits provided.

(5) For the purposes of this section:

(a) "domestic violence" means the physical, mental, or emotional abuse of an individual or the individual's child by a person with whom that individual or the individual's child lives or has recently lived;

(b) "sexual assault" means sexual assault as described in 45-5-502, sexual intercourse without consent as described in 45-5-503, incest as described in 45-5-507, or sexual abuse of children as described in 45-5-625; and

(c) "stalking" has the meaning provided in 45-5-220.

History: En. Sec. 1, Ch. 520, L. 2001; amd. Sec. 1, Ch. 187, L. 2005; amd. Sec. 8, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 in (1)(b) substituted "The account of an employer with an experience rating as provided in 39-51-1213" for "An employer's account"; near end of (1)(c) after "unemployment" inserted "insurance"; and made minor changes in style. Amendment effective October 1, 2011.

39-51-2112. Benefit ineligibility for leave of absence. (1) An individual is ineligible to receive benefits during an approved leave of absence.

(2) An individual is eligible to receive benefits when the individual returns to and offers service to the individual's employer after returning from an approved leave of absence and the individual's regular or comparable suitable work is not available, as determined by the department, provided that the individual is otherwise eligible.

History: En. Sec. 2, Ch. 88, L. 2009.

39-51-2113. Benefit ineligibility for suspension. (1) An individual who files for benefits during a disciplinary suspension is ineligible to receive benefits for 2 weeks or until the suspension ends, whichever occurs first.

(2) Ineligibility based upon a disciplinary suspension may not be imposed for any week beginning after the second week of the suspension. If the individual remains suspended, the individual must be considered discharged for purposes of unemployment insurance. The department shall determine whether the discharge constitutes misconduct under 39-51-2303.

History: En. Sec. 3, Ch. 88, L. 2009.

39-51-2114 reserved.

39-51-2115. Part-time work search — eligibility for benefits. (1) Except as provided in subsection (2), an individual may not be denied regular unemployment compensation benefits solely because the individual is seeking only part-time work, as that term is defined in rules adopted by the department.

(2) In order to be qualified for benefits under subsection (1), the majority of the individual's workweeks in the base period must have been part-time.

History: En. Sec. 29, Ch. 489, L. 2009.

39-51-2116. Participation in worker training program — eligibility for training benefits. (1) Subject to the requirements of this section, training benefits are available to an individual who has exhausted all rights to regular unemployment compensation benefits and who is attending an approved worker training program.

(2) An unemployed individual who is participating and making satisfactory progress in a state-approved training program or a job training program authorized by the Workforce Investment Act of 1998 that is necessary for the individual's reemployment is eligible to receive training benefits if, as determined by the department:

(a) the individual was:

(i) separated from a declining occupation; or

(ii) involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment;

(b) the training enhances the individual's marketable skills and earning power; and

(c) the training is targeted to those industries or skills that are in demand within the labor market.

(3) Benefits must be paid under this section at the individual's average weekly benefit amount during the applicable benefit year and under the same terms and conditions as regular benefits.

(4) Benefits are payable under this section only for weeks during which the individual is attending an approved training program.

(5) An employer's account may not be charged for payment of benefits to an individual under this section.

History: **En. Sec. 30, Ch. 489, L. 2009.**

Part 22
Amount and Duration of Benefits

Part Cross-References

General definitions, 39-51-201.

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) An individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before that date for the preceding calendar year must be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on the contribution reports. The amount obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage.

(3) The maximum and minimum weekly benefit amounts are computed in the following manner:

(a) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule II or higher, the maximum weekly benefit amount is 66.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 19% of the average weekly wage.

(b) (i) If the unemployment insurance contributions schedule provided for in 39-51-1218 is Schedule I, the maximum weekly benefit amount is 67.5% of the average weekly wage and must be applied to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year.

(ii) The minimum weekly benefit amount must be 20% of the average weekly wage.

History: **En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985; amd. Sec. 2, Ch. 485, L. 1991; amd. Sec. 1, Ch. 333, L. 2001; amd. Sec. 2, Ch. 432, L. 2003; amd. Sec. 1, Ch. 92, L. 2005; amd. Sec. 1, Ch. 86, L. 2007; amd. Sec. 17, Ch. 25, L. 2009.**

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment, as used in this section, is the claimant's weekly benefit amount less 50% of wages for employment earned in excess of one-fourth of the claimant's weekly benefit amount. The wages for employment and the one-fourth weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount.

History: **En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A); amd. Sec. 2, Ch. 193, L. 1983; amd. Sec. 2, Ch. 400, L. 1999.**

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment that is based on the previous work of the individual and that is reasonably attributable to the week if:

(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and

(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.

(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 145, L. 1983; amd. Sec. 8, Ch. 618, L. 1989; amd. Sec. 4, Ch. 171, L. 1993; amd. Sec. 12, Ch. 195, L. 1995.

39-51-2204. Maximum benefit amount. Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter At Least	But Less Than	Full Weeks of Benefits
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	3.50	26
3.50	....	28

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979; amd. Sec. 2, Ch. 153, L. 1987; amd. Sec. 3, Ch. 485, L. 1991; amd. Sec. 3, Ch. 432, L. 2003.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

39-51-2206. Repealed. Sec. 28, Ch. 234, L. 1987.

History: En. Sec. 15, Ch. 125, L. 1985.

39-51-2207. Voluntary and other withholding of taxes from benefits — procedures. (1) The department shall advise an individual at the time the individual files a new claim for unemployment compensation that:

(a) unemployment compensation is subject to federal income tax;

(b) requirements exist pertaining to estimated tax payments;

(c) the individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation at the rate or amount specified in the Internal Revenue Code; and

(d) the individual may change a previously elected withholding status in a manner and at a frequency prescribed by the department.

(2) Funds deducted and withheld from unemployment compensation must remain in the unemployment insurance fund provided for in 39-51-401 until the funds are transferred as income tax payments to the internal revenue service.

(3) The department shall:

(a) follow all procedures specified by the United States department of labor and the internal revenue service pertaining to the voluntary deduction and withholding of income tax from unemployment compensation; and

(b) deduct and withhold from unemployment compensation amounts of federal income tax other than those specified in subsection (1)(c) in accordance with the priorities established by the department by rule.

History: En. Sec. 1, Ch. 60, L. 1997.

39-51-2208. Deduction and withholding of unemployment benefits to repay overissuance of food stamps — definitions. (1) For the purposes of this section, the following definitions apply:

(a) "State food stamp agency" means any agency of a state or a political subdivision of a state that is responsible for enforcing the repayment of an obligation for overissuance of food stamp benefits.

(b) "Unemployment benefits" means benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law that provides for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall disclose at the time of filing the claim whether or not the individual owes for an uncollected overissuance of food stamp benefits as defined in section 13(c)(1) of the Food Stamp Act of 1977, 7 U.S.C. 2022(c)(1). If an individual discloses that the individual has an uncollected obligation for overissuance of food stamp benefits and if the department finds that the individual is eligible for unemployment benefits, the department shall notify the state food stamp agency that the individual is eligible for unemployment benefits.

(3) Except as provided in subsection (7), the department shall deduct and withhold from any unemployment benefits payable to an individual who has an obligation for an uncollected overissuance of food stamp benefits:

(a) the amount specified by the individual to the department to be deducted and withheld, in which case subsections (3)(b) and (3)(c) are not applicable;

(b) the amount, if any, determined by a state food stamp agency for enforcing obligations for overissuance of food stamp benefits, pursuant to an agreement submitted to the department under section 13(c)(3)(A) of the Food Stamp Act of 1977, 7 U.S.C. 2022(c)(3)(A), unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to section 13(c)(3)(B) of the Food Stamp Act of 1977, 7 U.S.C. 2022 (c)(3)(B).

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state food stamp agency responsible for enforcing an obligation for overissuance of food stamp benefits.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the state food stamp agency in satisfaction of the individual's uncollected overissuance of food stamp benefits.

(7) The department may not deduct or withhold unemployment benefits in a case involving overissuance of food stamps that meets the provisions of 53-2-108(2).

History: En. Sec. 2, Ch. 60, L. 1997; amd. Sec. 1, Ch. 205, L. 2007.

Part 23
Benefit Disqualification

Part Cross-References

General definitions, 39-51-201.

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified for any of the following reasons:

(a) The individual leaves employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing health care provider and, after recovering from the illness or injury when recovery is certified by a licensed and practicing health care provider, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible.

(b) The individual leaves temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(c) The individual leaves employment because of being ordered to military service, as defined in 10-1-1003, for a period of less than 6 weeks and the individual upon checking with the employer finds that the individual's prior employment has terminated due to the military service or for other nondisqualifying reasons. Any benefits paid under this subsection (2)(c) are not chargeable to the account of an employer with an experience rating as provided in 39-51-1213.

(d) The individual leaves employment because of the mandatory military transfer of the individual's spouse. Any benefits paid under this subsection (2)(d) are not chargeable to the account of an employer with an experience rating as provided in 39-51-1213.

(3) To requalify for benefits, an individual shall perform services for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the act that caused the disqualification. The services must constitute employment as defined in 39-51-203 and 39-51-204.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985; amd. Sec. 30, Ch. 373, L. 1991; amd. Sec. 9, Ch. 60, L. 1997; amd. Sec. 6, Ch. 61, L. 1999; amd. Sec. 3, Ch. 94, L. 2003; amd. Sec. 26, Ch. 381, L. 2005; amd. Sec. 12, Ch. 52, L. 2007; amd. Sec. 2, Ch. 86, L. 2007; amd. Sec. 9, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 near end of (2)(c) and (2)(d) substituted "account of an employer with an experience rating as provided in 39-51-1213" for "employer's account". Amendment effective October 1, 2011.

39-51-2303. Disqualification for discharge due to misconduct. An individual must be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services:

(a) for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; and

(b) that constitute employment as defined in 39-51-203 and 39-51-204; or

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 234, L. 1987; amd. Sec. 7, Ch. 61, L. 1999.**

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) (a) An individual is disqualified for benefits if the individual fails without good cause to:

(i) apply for available and suitable work when directed to do so by the employment office or the department; or

(ii) accept an offer from a former employer or a new employer of suitable work that the individual is physically able and mentally qualified to perform.

(b) The disqualification continues for the week in which the failure occurs and until the individual has performed services for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the week the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department. The services constitute employment as defined in 39-51-203.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), work may not be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. However, an individual is not required to accept a job paying less than the federal minimum wage.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6,**

Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 409, L. 1985; amd. Sec. 3, Ch. 153, L. 1987; amd. Sec. 17, Ch. 234, L. 1987; amd. Sec. 8, Ch. 61, L. 1999; amd. Sec. 13, Ch. 52, L. 2007; amd. Sec. 18, Ch. 25, L. 2009.

39-51-2305. Disqualification when unemployment because of strike. (1) An individual must be disqualified for benefits for any week with respect to which the department finds that the individual's total unemployment is due to a strike that exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed. However, this subsection does not apply if it is shown to the satisfaction of the department that the individual:

(a) is not participating in or financing or directly interested in the labor dispute that caused the strike; and

(b) does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department must, for the purpose of this section, be considered to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, finds that the labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state in which the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, the labor dispute may not render the workers ineligible for benefits.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 400, L. 1985; amd. Sec. 1535, Ch. 56, L. 2009.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) An individual is disqualified for benefits for any week with respect to which the individual receives payment for the week or part of the week in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States. However, when an injured claimant ceases to draw compensation benefits and returns to the labor market, the claimant is entitled to receive unemployment compensation benefits under this chapter if the claimant is otherwise qualified. Compensation received as a payment for a permanent partial disability may not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter if the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act, 45 U.S.C. 351, et seq., or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual receives benefits under an unemployment compensation law of another state or of the United States if the benefits are paid pursuant to 39-51-504.

(2) If an individual receives wages, compensation, or benefits as set forth in subsection (1) after payment of unemployment benefits with respect to the same week for which unemployment benefits were received, the individual shall repay the unemployment benefits, and the department may collect the unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 618, L. 1989; amd. Sec. 14, Ch. 52, L. 2007; amd. Sec. 19, Ch. 25, L. 2009.

39-51-2307. School attendance. (1) An individual who is a student attending an established educational institution may qualify for benefits provided that the individual can demonstrate to the department's satisfaction that the individual meets the requirements of 39-51-2104.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(1)(b).

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985; amd. Sec. 2, Ch. 404, L. 1993; amd. Sec. 13, Ch. 195, L. 1995; amd. Sec. 13, Ch. 88, L. 2009.

39-51-2308. Repealed. Sec. 31, Ch. 373, L. 1991.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).

Part 24
Claims for Benefits

Part Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.
General definitions, 39-51-201.

39-51-2401. Claims to be made in accordance with rules — notice of coverage. Claims for benefits must be made in accordance with rules adopted by the department. Each employer shall post and maintain printed statements of the notice of coverage that is prepared and distributed by the department in places readily accessible to individuals in the employer's service. The notice of coverage must be supplied by the department to each employer without cost to the employer.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 20, Ch. 25, L. 2009; amd. Sec. 1536, Ch. 56, L. 2009.

39-51-2402. Determination — redetermination. (1) The department shall promptly examine a claim for benefits, and on the basis of the department's findings of fact, the department shall determine whether or not the claim is valid. If the claim is valid, the department shall determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit amount. The department may refer the claim or any question involved in the claim to an appeals referee who shall make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. The department shall promptly notify the claimant and any other interested party of its determination and the reasons for reaching the determination.

(2) The department may for good cause reconsider its determination and shall promptly notify the claimant and other interested parties of the redetermination and the reasons for the redetermination.

(3) A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after the notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

(4) Except as provided in subsection (5), a redetermination of any issue of an original determination may not be made after 2 years from the date of the original determination of that issue.

(5) A redetermination of any issue of an original determination may be made within 3 years from the date of the original determination of that issue if the original determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 153, L. 1987; amd. Sec. 18, Ch. 234, L. 1987; amd. Sec. 10, Ch. 618, L. 1989; amd. Sec. 28, Ch. 491, L. 1997; amd. Sec. 10, Ch. 597, L. 2003; amd. Sec. 9, Ch. 67, L. 2005; amd. Sec. 14, Ch. 466, L. 2005; amd. Sec. 14, Ch. 88, L. 2009.

39-51-2403. Hearing — decision of appeals referee. Upon appeal of a determination or redetermination under 39-51-2402, an appeals referee shall hold a hearing, which may be conducted by telephone or by videoconference. After the hearing, the appeals referee shall promptly make findings and conclusions and affirm, modify, or reverse the department's determination or redetermination. Each interested party must be promptly furnished a copy of the decision and the supporting findings and conclusions. This decision is final unless further review is initiated pursuant to 39-51-2404 within 10 days after notification was mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e); amd. Sec. 19, Ch. 234, L. 1987; amd. Sec. 14, Ch. 195, L. 1995; amd. Sec. 15, Ch. 88, L. 2009.

39-51-2404. Appeal to board procedure. An interested party who is dissatisfied with a decision of an appeals referee may appeal to the board. The department shall promptly transmit all records pertinent to the appeal to the board. The appeal hearing may be conducted by telephone or by videoconference. When a decision is rendered by the board and copies of the decision are mailed to all interested parties, including the department, that decision is final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to the party's last-known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 15, Ch. 195, L. 1995.

39-51-2405. Prompt payment of claims. (1) Benefits must be paid promptly in accordance with the most recently issued:

(a) determination or redetermination under 39-51-2402;

(b) decision of an appeals referee under 39-51-2403;

(c) decision of the board under 39-51-2404; or

(d) decision of a reviewing court pursuant to a judicial review initiated under 39-51-2404.

(2) The filing of a request for redetermination, an appeal, or a request for judicial review may not delay or postpone the payment of benefits until the determination, redetermination, or decision has been modified or reversed.

(3) An individual considered eligible to receive benefits must be paid promptly regardless of any further appeal or disposition of an appeal that is not a final disposition of the case. An injunction, stay, writ, or other process suspending the payment of benefits may not be issued by the board or a court until the final disposition of the case.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f); amd. Sec. 21, Ch. 25, L. 2009; amd. Sec. 16, Ch. 88, L. 2009.

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2407. Procedure for disputed claims to be prescribed by regulation — conduct of hearing or appeal. (1) The manner in which disputed claims must be presented, the reports on disputed claims required from the claimant and from employers, and the conduct of hearings and appeals must be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not the regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

(2) A hearing or appeal may be conducted by telephone or by videoconference.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 195, L. 1995.

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record must be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim must be recorded but need not be transcribed unless required by a district court or appellate court for judicial review.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 22, Ch. 25, L. 2009.

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981; amd. Sec. 14, Ch. 125, L. 1985; amd. Sec. 20, Ch. 234, L. 1987.

Part 25
Extended Benefits

Part Cross-References

General definitions, 39-51-201, 39-51-2501.

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Eligibility period", relating to extended benefits, means the period consisting of the weeks in the individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any weeks thereafter that begin in the period.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to that week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes that week. However, for the purposes of this subsection, an individual is considered to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits.

(b) if the benefit year has expired prior to that week, has no wages or insufficient wages on the basis of which the individual could establish a new benefit year that would include that week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and other federal laws that are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under law, the individual is considered an exhaustee.

(3) "Extended benefit period" means a period that:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period that was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of the period.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(5) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of the 13-week period.

(b) Computations required by the provisions of subsection (5)(a) must be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code, 26 U.S.C. 3304, as amended.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981; amd. Sec. 4, Ch. 84, L. 1983; amd. Sec. 21, Ch. 234, L. 1987; amd. Sec. 77, Ch. 114, L. 2003.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds with respect to the week that the individual:

(a) is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

(c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if disqualified, the individual satisfies the requirements for requalification in that part; and

(d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified for extended benefits if the individual fails to seek work. The disqualification continues for the week in which the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless the individual has earned at least eight times the weekly benefit amount after the date of the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". The definition must be in accordance with the requirements of 26 U.S.C. 3304.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983; amd. Sec. 5, Ch. 171, L. 1993; amd. Sec. 175, Ch. 42, L. 1997.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period must be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d); amd. Sec. 1537, Ch. 56, L. 2009.

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to an eligible individual with respect to that individual's applicable benefit year must be the least of the following amounts:

(1) 50% of the total amount of regular benefits that were payable to the individual under this chapter in the individual's applicable benefit year;

(2) 13 times the individual's weekly benefit amount that was payable to the individual under this chapter for a week of total unemployment in the individual's applicable benefit year; or

(3) 39 times the individual's weekly benefit amount, less the amount of regular benefits paid or considered paid during the individual's applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e); amd. Sec. 15, Ch. 52, L. 2007.

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Part 26
Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: En. Sec. 2, Ch. 7, Sp. L. 1981.

39-51-2602. Approved training under federal programs. (1) Notwithstanding any other provisions of this chapter, an otherwise eligible individual may not be denied benefits for any week:

(a) because of participation in training approved under section 236(a)(1) of the federal Trade Act of 1974 (19 U.S.C. 2296) or under Title I-B of the Workforce Investment Act of 1998 (29 U.S.C. 2801, et seq.) when the individual is receiving Title I-B services as a dislocated worker;

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any week in training of the provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974.

History: En. Sec. 1, Ch. 7, Sp. L. 1981; amd. Sec. 19, Ch. 373, L. 1991; amd. Sec. 176, Ch. 42, L. 1997; amd. Sec. 8, Ch. 424, L. 2001.

Parts 27 through 30 reserved

Part 31
Protections and Limitations on Rights and Benefits

Part Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.
General definitions, 39-51-201.
Misdemeanor defined, 45-2-101.

39-51-3101. Protection against self-incrimination. A person may not be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the presiding officer of an appeal tribunal, or any authorized representative of either of them or in obedience to the subpoena of the department or board or any member of the board or any authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury committed in testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1538, Ch. 56, L. 2009.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute the individual's rights to benefits or any other rights under this chapter is void.

(2) Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from the employer is void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part); amd. Sec. 1539, Ch. 56, L. 2009.

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) An employer may not, directly or indirectly, make, require, or accept any deduction from wages to finance the employer's contributions required from the employer or require or accept a waiver of any right under this chapter by an individual in the employer's employ.

(2) An employer or officer or agent of an employer who violates any provision of 39-51-3102 or this section shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months, or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part); amd. Sec. 1540, Ch. 56, L. 2009.

39-51-3104. Repealed. Sec. 21, Ch. 88, L. 2009.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by an individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except as provided in 39-51-2207, 39-51-2208, 39-51-3106, 39-51-3107, and 39-51-3206. Any waiver of an exemption provided for in this section is void.

History: En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143; amd. Sec. 22, Ch. 234, L. 1987; amd. Sec. 6, Ch. 171, L. 1993; amd. Sec. 10, Ch. 60, L. 1997; amd. Sec. 9, Ch. 61, L. 1999.

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act (42 U.S.C. 654) that has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act (now Subchapter IV).

(b) "State or local child support enforcement agency" means any agency of a state or political subdivision operating pursuant to a plan provided for in subsection (1)(a).

(c) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations. If an individual discloses that the individual owes child support obligations and the individual is determined to be eligible for unemployment benefits, the department shall notify the state or local child

support enforcement agency enforcing the obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section 454(19)(B)(i) of the Social Security Act (42 U.S.C. 654(19)(B)(i)) by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be deducted and withheld from unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act (42 U.S.C. 662(e)), properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981; amd. Sec. 5, Ch. 84, L. 1983; amd. Sec. 177, Ch. 42, L. 1997.

39-51-3107. Internal revenue levy — withholding of unemployment benefits to repay federal tax obligations. (1) The internal revenue service may levy against an individual's unemployment benefits if the individual:

(a) is liable for taxes, interest, or penalties owed to the internal revenue service; and

(b) has not paid the taxes, interest, or penalties in subsection (1)(a) within 10 days of receiving a notice and demand for repayment from the internal revenue service.

(2) Pursuant to 26 U.S.C. 6331(h)(2)(c), any amount payable as unemployment benefits may be levied against until the levy is released.

(3) The levy may be implemented electronically by the department and the internal revenue service.

(4) After receiving notice of a levy from the internal revenue service, the department shall deduct and withhold up to 15% from any unemployment benefits payable to the individual owing money to the internal revenue service. The amount withheld must be determined by the internal revenue service in accordance with 26 U.S.C. 6331(h)(2)(c).

(5) The department shall pay any amount deducted and withheld pursuant to this section to the internal revenue service on behalf of the individual. Any amount deducted and withheld must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the internal revenue service in satisfaction of the individual's federal tax obligations.

History: En. Sec. 1, Ch. 61, L. 1999.

Part 32
General Penalties

Part Cross-References

General definitions, 39-51-201.

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. (1) (a) A person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for the individual or for any other person, is:

(i) disqualified for benefits for a period of not more than 52 weeks, beginning with the first compensable week following the date of determination by the department, with the length of time of the disqualification to be determined by the department in accordance with the severity of each case; and

(ii) required to repay to the department, pursuant to the provisions of 39-51-3206, a sum equal to the amount wrongfully received by the individual, plus the department may assess a penalty not to exceed 100% of the fraudulently obtained benefits.

(b) Future benefits may not be used to offset the penalty due. However, the individual is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that the individual made false statements, willful nondisclosure, or misrepresentation.

(2) (a) An individual, other than a person with a bona fide disability that prevents the individual from making or filing a claim for benefits on the individual's own behalf, who allows or authorizes another person to make or file a claim for benefits on the individual's behalf without designating that person as an authorized agent is subject to the penalties prescribed in subsection (1).

(b) The designation of a person who is not an attorney as an individual's agent must be in writing and signed by the individual. The designation must specify:

(i) the period of time covered by the designation; and

(ii) any limits on the agent's authority.

(c) Any action taken or information provided by an agent has the same effect as an action taken or information provided by the individual.

(3) All money accruing from the penalty under subsection (1)(a) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 226, L. 1985; amd. Sec. 27, Ch. 373, L. 1991; amd. Sec. 11, Ch. 60, L. 1997; amd. Sec. 17, Ch. 88, L. 2009.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)(a).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 23, Ch. 234, L. 1987; amd. Sec. 28, Ch. 373, L. 1991; amd. Sec. 18, Ch. 88, L. 2009.

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits that the person is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for that conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against the person.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3); amd. Sec. 1542, Ch. 56, L. 2009.

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. (1) Any employing unit, any officer or agent of an employing unit, or any other person may not make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact in order to:

(a) prevent or reduce the payment of benefits to any entitled individual;

(b) avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government; or

(c) avoid the requirements of this chapter.

(2) An employing unit, any officer or agent of an employing unit, or any other person who violates a provision of subsection (1) shall be punished by a fine of not less than $50 or more than $500, by imprisonment for not less than 3 days or more than 30 days in the county jail, or by both. Each false statement or representation or failure to disclose a material fact and each day of the failure to disclose constitutes a separate offense.

(3) An employing unit or any officer or agent of the employing unit is subject to the penalty provisions of subsection (2) for willfully failing or refusing to:

(a) make any contributions or payments required by this chapter;

(b) furnish any reports required by this chapter; or

(c) produce or permit the inspection or copying of any records or materials as required by this chapter.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4); amd. Sec. 23, Ch. 25, L. 2009.

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

Cross-References

Misdemeanor defined, 45-2-101.

39-51-3206. Collection of benefit overpayments. (1) A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment.

(2) The department may collect a benefit overpayment and any penalty:

(a) by having the claimant pay the amount owed directly to the department by check, money order, credit card, debit card, or electronic funds transfer;

(b) by offsetting the amount of the overpaid benefits owed against future unemployment benefits to be received by the claimant; or

(c) as provided in 39-51-3208.

(3) The claimant is responsible for any:

(a) penalty established in accordance with 39-51-3201; and

(b) costs or processing fees associated with using the repayment methods set out in subsection (2)(a).

(4) The department may enter into an agreement with a claimant for the repayment of any benefit overpayment and penalty provided that repayment in full is made within 5 years of the date that it was established that an overpayment occurred.

(5) (a) Except as provided in subsection (5)(b), a benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent.

(b) In cases of theft or fraud or when benefit overpayments have been made to winners of a state lottery as provided in 39-51-3208, benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled.

(6) (a) The department may collect any benefit overpayment and penalty by directing the offset of any funds due the claimant from the state, except future unemployment benefits as provided in subsection (1) and retirement benefits. The department, through the department of revenue or through the state lottery commission established in 23-7-201 if overpayment is to be collected as provided in 39-51-3208, shall provide the claimant with notice of the right to request a hearing on the offset action. A request for hearing must be made within 30 days of the date of the notice.

(b) The debt does not have to be determined to be uncollectible before being transferred for offset.

(7) (a) The department may direct the offset of funds owed to a person under 26 U.S.C. 6402 if the person owes a covered unemployment compensation debt.

(b) For the purposes of this subsection (7), "covered unemployment compensation debt" means:

(i) a benefit overpayment and penalty owed because of the erroneous payment of unemployment compensation resulting from fraud, which has been adjudicated as a debt under Montana law and has remained uncollected for not more than 10 years; or

(ii) employer contributions, penalty, and interest owed to the unemployment trust fund that the department determines are attributable to fraud and that have remained uncollected for not more than 10 years.

(8) If, upon demand of the department, the claimant fails to make the payments provided for in this section, the unpaid benefit overpayment and associated penalty may be treated as a judgment against the claimant at the time the payments become due. The department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the claimant. The department may enforce the judgment at any time within 10 years of creation of the lien.

(9) The department may waive the benefit overpayment if the department finds that:

(a) the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant; or

(b) the overpayment was the result of department error.

(10) An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment.

(11) Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 24, Ch. 234, L. 1987; amd. Sec. 56, Ch. 83, L. 1989; amd. Sec. 7, Ch. 171, L. 1993; amd. Sec. 10, Ch. 61, L. 1999; amd. Sec. 19, Ch. 88, L. 2009; amd. Sec. 10, Ch. 123, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 123 inserted (2)(c) concerning 39-51-3208; in (5)(b) inserted "or when benefit overpayments have been made to winners of a state lottery as provided in 39-51-3208"; near end of (6)(a) after "revenue" inserted "or through the state lottery commission established in 23-7-201 if overpayment is to be collected as provided in 39-51-3208"; and made minor changes in style. Amendment effective October 1, 2011.

39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404, and penalties and interest, or overpaid benefits and penalties under 39-51-3206, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected, the department of revenue shall retain only a proportionate share of the collection fees or costs.

History: En. Sec. 25, Ch. 234, L. 1987; amd. Sec. 8, Ch. 419, L. 1989; amd. Sec. 29, Ch. 325, L. 1995; amd. Sec. 50, Ch. 7, L. 2001; amd. Sec. 6, Ch. 362, L. 2007; amd. Sec. 20, Ch. 88, L. 2009.

39-51-3208. Interception of lottery winnings for unemployment insurance offsets — notice to agency — procedures. (1) For the purposes of this section:

(a) "unemployment insurance benefit overpayments" includes collections that are made pursuant to 39-51-3206;

(b) "unpaid taxes, penalties, and interest" includes payments required from employers under 39-51-404, 39-51-603, 39-51-1103, 39-51-1105, 39-51-1125, and 39-51-1301; and

(c) "unemployment insurance division" means the unemployment insurance division of the department of labor and industry.

(2) The unemployment insurance division shall periodically certify to the state lottery the names and social security numbers of persons who have incurred unemployment insurance benefit overpayments and the names and social security numbers of individual employers who are liable for unpaid taxes, including penalties and interest assessed on unpaid taxes.

(3) The state lottery shall deduct and withhold from any payment of lottery winnings the amount specified by the unemployment insurance division as the amount of the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(4) The state lottery shall pay any amount deducted and withheld under subsection (3) to the unemployment insurance division for application to the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

(5) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as lottery winnings and paid by the individual to the unemployment insurance division as repayment against the unemployment insurance benefit overpayments or unpaid taxes, penalties, and interest.

History: En. Sec. 13, Ch. 123, L. 2011.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

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RESERVED

CHAPTER 71
WORKERS' COMPENSATION

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Chapter Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Part 1
General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.
Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

39-71-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to provide assistance to a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(5) This chapter must be construed according to its terms and not liberally in favor of any party.

(6) It is the intent of the legislature that:

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(b) for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace.

History: En. Sec. 1, Ch. 464, L. 1987; amd. Sec. 1, Ch. 630, L. 1993; amd. Sec. 1, Ch. 103, L. 2005; amd. Sec. 9, Ch. 416, L. 2005; amd. Sec. 7, Ch. 448, L. 2005; amd. Sec. 1, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) in second sentence near end substituted "provide assistance to" for "assist". Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of this chapter.

History: En. Sec. 17, Ch. 619, L. 1993; amd. Sec. 10, Ch. 416, L. 2005.

39-71-107. Insurers to act promptly on claims — in-state claims examiners — third-party agents — penalties. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed $200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) (a) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer that uses a third-party agent to review medical bills shall, when first using the agent's services and annually in subsequent years, obtain written certification from the agent that, for each bill the agent reviews, the agent agrees to calculate the payment due based on the Montana workers' compensation medical fee schedules, provided for under 39-71-704, that were in effect on the date the service was provided.

(b) Except for those medical benefits provided by a managed care organization or a preferred provider organization in Title 39, chapter 71, part 11, or paid pursuant to 39-71-704(4), an insurer whose agent neglects or fails to use the proper fee schedule may be assessed a penalty of not less than $200 or more than $1,000 for each bill that its agent reviews under a fee schedule other than the proper Montana fee schedule.

(c) An insurer that without good cause neglects or fails to pay undisputed medical bills on an accepted liability claim within 60 days of receipt of the bill may be assessed a penalty of not less than $200 or more than $1,000 for each bill that is the subject of a delay as provided in this subsection (5)(c).

(6) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits are denied to a claimant, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(7) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(8) An insurer may contest a penalty assessed pursuant to subsection (4) or (5) in a hearing conducted according to department rules. A party may appeal the final agency order to the workers' compensation court. The court shall review the order pursuant to the requirements of 2-4-704.

(9) The department may adopt rules to implement this section.

(10) (a) For the purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits.

History: En. Sec. 4, Ch. 243, L. 1995; amd. Sec. 3, Ch. 214, L. 2001; amd. Sec. 2, Ch. 103, L. 2005; amd. Sec. 2, Ch. 140, L. 2005; amd. Sec. 11, Ch. 416, L. 2005; amd. Sec. 1, Ch. 117, L. 2007; amd. Sec. 5, Ch. 112, L. 2009; amd. Sec. 1, Ch. 150, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 150 inserted (5) requiring workers' compensation insurers and their agents to pay medical providers on a timely and appropriate basis and providing penalties on the insurer for failure to do so; inserted (8) relating to contesting a penalty; and made minor changes in style. Amendment effective July 1, 2011.

39-71-108 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.

(5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(8) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:

(i) determine liability;

(ii) apply the requirements of this title;

(iii) settle workers' compensation or occupational disease claims; or

(iv) determine survivor benefits.

(b) The term does not include an adjuster as defined in 33-17-102.

(9) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.

(b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Direct result" means that a diagnosed condition was caused or aggravated by an injury or occupational disease.

(13) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(14) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(15) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.

(b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(16) (a) "Indemnity benefits" means any payment made directly to the worker or the worker's beneficiaries, other than a medical benefit. The term includes payments made pursuant to a reservation of rights.

(b) The term does not include stay-at-work/return-to-work assistance, auxiliary benefits, or expense reimbursements for items such as meals, travel, or lodging.

(17) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(18) "Invalid" means one who is physically or mentally incapacitated.

(19) "Limited liability company" has the meaning provided in 35-8-102.

(20) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(21) "Medical stability", "maximum medical improvement", "maximum healing", or "maximum medical healing" means a point in the healing process when further material functional improvement would not be reasonably expected from primary medical services.

(22) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(23) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(24) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.

(25) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(26) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(27) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment, as determined by the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, that is established by objective medical findings for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease and may not be based exclusively on complaints of pain.

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(28) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(29) "Primary medical services" means treatment prescribed by the treating physician, for conditions resulting from the injury or occupational disease, necessary for achieving medical stability.

(30) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(31) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(32) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(33) "Regular employment" means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state.

(34) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (34), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(35) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(36) "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

(37) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(38) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(39) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(40) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(41) "Treating physician" means the person who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker's medical services for the treatment of a worker's compensable injury or occupational disease and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (41)(a), in the area where the physician assistant is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 3;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (41)(a) through (41)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

(42) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(43) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989; amd. Sec. 6, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 323, L. 1991; amd. Sec. 2, Ch. 480, L. 1991; amd. Sec. 1, Ch. 574, L. 1991; amd. Sec. 1, Ch. 555, L. 1993; amd. Sec. 1, Ch. 619, L. 1993; amd. Sec. 2, Ch. 628, L. 1993; amd. Sec. 1, Ch. 234, L. 1995; amd. Sec. 5, Ch. 243, L. 1995; amd. Sec. 1, Ch. 516, L. 1995; amd. Sec. 6, Ch. 276, L. 1997; amd. Sec. 1, Ch. 404, L. 1997; amd. Sec. 1, Ch. 500, L. 1997; amd. Sec. 72, Ch. 51, L. 1999; amd. Sec. 30, Ch. 224, L. 2003; amd. Sec. 5, Ch. 26, L. 2005; amd. Sec. 3, Ch. 140, L. 2005; amd. Secs. 12, 41, Ch. 416, L. 2005; amd. Sec. 20, Ch. 519, L. 2005; amd. Sec. 1, Ch. 359, L. 2007; amd. Sec. 2, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 inserted definitions of direct result, health care provider, indemnity benefits, and regular employment; in definition of medical stability inserted "maximum medical improvement", after "material" inserted "functional", and at end substituted "services" for "treatment"; in definition of permanent partial disability in (a) in first sentence inserted reference to the sixth edition guides, at end of sentence inserted "for the ratable condition", and added last sentence relating to a direct result of injury or disease and not exclusively on complaints of pain; in definition of permanent total disability deleted former second sentence that read: "Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state"; in definition of primary medical services inserted "or occupational disease"; in definition of treating physician in lead-in substituted "the person who, subject to the requirements of 39-71-1101, is primarily responsible for delivery and coordination of the worker's medical services for the treatment of a worker's compensable injury or occupational disease" for "a person who is primarily responsible for the treatment of a worker's compensable injury"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

Cross-References

Rehabilitation benefits, 39-71-1006.

Managed care and preferred provider organizations, Title 39, ch. 71, part 11.

39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter;

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities; and

(d) a religious corporation, religious organization, or religious trust receiving remuneration from nonmembers for agricultural production, manufacturing, or a construction project conducted by its members on or off the property of the religious corporation, religious organization, or religious trust.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 323, L. 1991; amd. Sec. 1, Ch. 813, L. 1991; amd. Sec. 1, Ch. 458, L. 1993; amd. Sec. 29, Ch. 308, L. 1995; amd. Sec. 18, Ch. 344, L. 1995; amd. Sec. 2, Ch. 516, L. 1995; amd. Sec. 1, Ch. 172, L. 1997; amd. Sec. 4, Ch. 214, L. 2001; amd. Sec. 8, Ch. 448, L. 2005; amd. Sec. 6, Ch. 112, L. 2009.

39-71-118. Employee, worker, volunteer, volunteer firefighter, and volunteer emergency medical technician defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1;

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(i) a member of a religious corporation, religious organization, or religious trust while performing services for the religious corporation, religious organization, or religious trust, as described in 39-71-117(1)(d).

(2) The terms defined in subsection (1) do not include a person who is:

(a) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(b) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(b), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(c) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(d) performing temporary agricultural work for an employer if the person performing the work is otherwise exempt from the requirement to obtain workers' compensation coverage under 39-71-401(2)(r) with respect to a company that primarily performs agricultural work at a fixed business location or under 39-71-401(2)(d) and is not required to obtain an independent contractor's exemption certificate under 39-71-417 because the person does not regularly perform agricultural work away from the person's own fixed business location. For the purposes of this subsection, the term "agricultural" has the meaning provided in 15-1-101(1)(a).

(3) (a) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(b).

(b) A fire district, fire service area, or volunteer fire department formed under Title 7, chapter 33, an ambulance service not otherwise covered by subsection (1)(g), or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee under the provisions of this chapter a volunteer firefighter or a volunteer emergency medical technician.

(4) (a) The term "volunteer emergency medical technician" means a person who has received a certificate issued by the board of medical examiners as provided in Title 50, chapter 6, part 2, and who serves the public through an ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county.

(b) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(c) The term "volunteer hours" means all the time spent by a volunteer firefighter or a volunteer emergency medical technician in the service of an employer or as a volunteer for a town, city, or county, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $900 a month and not more than 1 ½ times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (6)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) For the purposes of an election under this subsection (6), all weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than $200 a week and not more than 1 ½ times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a), and when injured in the course and scope of employment as a volunteer firefighter may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in Title 39, chapter 8, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

(12) (a) An ambulance service not otherwise covered by subsection (1)(g) or a paid or volunteer nontransporting medical unit, as defined in 50-6-302, in service to a town, city, or county may elect to include as an employee within the provisions of this chapter a volunteer emergency medical technician who serves public safety through the ambulance service not otherwise covered by subsection (1)(g) or the paid or volunteer nontransporting medical unit.

(b) In the event of an election under subsection (12)(a), the employer shall report payroll for all volunteer emergency medical technicians for premium and weekly benefit purposes based on the number of volunteer hours of each emergency medical technician, but no more than 60 hours, times the state's average weekly wage divided by 40 hours.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer emergency medical technician pursuant to subsection (12)(a), and when injured in the course and scope of employment as a volunteer emergency medical technician may in addition to the benefits described in subsection (12)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. If an election is made as provided in subsection (12)(a), payrolls must be reported and premiums must be assessed on the assumed weekly wage.

(d) A volunteer emergency medical technician who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17, if the individual is also eligible as a volunteer firefighter.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985; amd. Sec. 96, Ch. 370, L. 1987; amd. Sec. 67, Ch. 464, L. 1987; amd. Sec. 25, Ch. 658, L. 1987; amd. Sec. 11, Ch. 333, L. 1989; amd. Sec. 1, Ch. 129, L. 1991; amd. Sec. 3, Ch. 323, L. 1991; amd. Sec. 2, Ch. 813, L. 1991; amd. Sec. 1, Ch. 154, L. 1993; amd. Sec. 8, Ch. 279, L. 1993; amd. Sec. 2, Ch. 458, L. 1993; amd. Sec. 1, Ch. 471, L. 1993; amd. Sec. 6, Ch. 561, L. 1993; amd. Sec. 1, Ch. 131, L. 1995; amd. Sec. 30, Ch. 308, L. 1995; amd. Sec. 19, Ch. 344, L. 1995; amd. Sec. 1, Ch. 424, L. 1995; amd. Sec. 3, Ch. 516, L. 1995; amd. Sec. 2, Ch. 172, L. 1997; amd. Sec. 2, Ch. 500, L. 1997; amd. Sec. 2, Ch. 515, L. 1997; amd. Sec. 1, Ch. 124, L. 1999; amd. Sec. 1, Ch. 238, L. 2001; amd. Sec. 3, Ch. 465, L. 2001; amd. Sec. 6, Ch. 26, L. 2005; amd. Sec. 7, Ch. 449, L. 2007; amd. Sec. 7, Ch. 112, L. 2009; amd. Sec. 1, Ch. 312, L. 2009; amd. Sec. 3, Ch. 167, L. 2011; amd. Sec. 8, Ch. 255, L. 2011; amd. Sec. 1, Ch. 262, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 167 deleted former (2)(a) that read: "(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment"; and made minor changes in style. Amendment effective April 12, 2011.

Chapter 255 inserted (3)(b) regarding election to include a volunteer firefighter or volunteer emergency medical technician as an employee; inserted (4)(a) defining volunteer emergency medical technician; in (4)(c) after "firefighter" inserted "or a volunteer emergency medical technician" and after "an employer" inserted "or as a volunteer for a town, city, or county"; in (6)(d) at beginning of first sentence inserted "For the purposes of an election under this subsection (6)"; in (7)(b) near middle after "hours of each firefighter" inserted "but no more than 60 hours", before "average" inserted "state's", and near end after "40 hours" deleted "subject to a maximum of 1 1/2 times the state's average weekly wage"; inserted (12) regarding volunteer emergency medical technicians; and made minor changes in style. Amendment effective July 1, 2011.

Chapter 262 inserted (2)(d) excluding temporary agricultural workers from the definition of employee. Amendment effective July 1, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

Cross-References

Independent contractor certification, 39-71-417.

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987; amd. Sec. 6, Ch. 243, L. 1995.

39-71-120. Repealed. Sec. 13, Ch. 448, L. 2005.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987; amd. Sec. 30, Ch. 500, L. 1995; amd. Sec. 11, Ch. 548, L. 1997.

39-71-121. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 47, L. 1981.

39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid;

(d) special rewards for individual invention or discovery; or

(e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(b) Except as provided in 39-71-118(7)(c) and (12)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) For the purposes of calculating compensation benefits for an employee working for an employer, as provided in 39-71-117(1)(d), and for calculating premiums to be paid by that employer, the wages must be based upon all hours worked multiplied by the mean hourly wage by area, as published by the department in the edition of Montana Informational Wage Rates by Occupation, adopted annually by the department, that is in effect as of the date of injury or for the period in which the premium is due.

History: **En. Sec. 4, Ch. 464, L. 1987; amd. Sec. 12, Ch. 333, L. 1989; amd. Sec. 2, Ch. 129, L. 1991; amd. Sec. 2, Ch. 261, L. 1991; amd. Sec. 2, Ch. 154, L. 1993; amd. Sec. 23, Ch. 619, L. 1993; amd. Sec. 2, Ch. 131, L. 1995; amd. Sec. 7, Ch. 243, L. 1995; amd. Sec. 29, Ch. 491, L. 1997; amd. Sec. 2, Ch. 124, L. 1999; amd. Sec. 2, Ch. 377, L. 1999; amd. Sec. 2, Ch. 238, L. 2001; amd. Sec. 4, Ch. 465, L. 2001; amd. Sec. 8, Ch. 112, L. 2009; amd. Sec. 9, Ch. 255, L. 2011.**

Compiler's Comments

2011 Amendment: Chapter 255 in (4)(b) near beginning substituted "39-71-118(7)(c) and (12)(c)" for "39-71-118(7)(c)". Amendment effective July 1, 2011.

39-71-124. Applicability of Workers' Compensation Act — exceptions. Except as provided in 39-71-407, 39-71-601, and 39-71-603, this chapter applies to injuries and occupational diseases.

History: **En. Sec. 1, Ch. 416, L. 2005.**

Part 2
Administrative Provisions

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which are to be paid upon lawful appropriation all costs of administering the Workers' Compensation Act and the statutory occupational safety and health acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in

39-71-907, and the uninsured employers' fund provided for in 39-71-503. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administration fund:

(a) all fees and penalties provided in 39-71-107, 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337;

(b) all penalties assessed under 50-71-119; and

(c) all fees paid by an assessment on paid losses, plus administrative fines and interest provided by this section.

(2) For the purposes of this section, paid losses include the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(3) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 1 in the form and containing the information required by the department a report of paid losses pursuant to subsection (2).

(4) Each employer enrolled under compensation plan No. 1, compensation plan No. 2, or compensation plan No. 3, the state fund, shall pay its proportionate share determined by the paid losses in the preceding calendar year of all costs of administering and regulating the Workers' Compensation Act and the statutory occupational safety acts that the department is required to administer, with the exception of the certification of independent contractors provided for in Title 39, chapter 71, part 4, the subsequent injury fund provided for in 39-71-907, and the uninsured employers' fund provided for in 39-71-503. In addition, compensation plan No. 3, the state fund, shall pay a proportionate share of these costs based upon paid losses for claims arising before July 1, 1990.

(5) (a) Each employer enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of the plan No. 1 employer. Any entity, other than the department, that assumes the obligations of an employer enrolled under compensation plan No. 1 is considered to be the employer for the purposes of this section.

(b) An employer formerly enrolled under compensation plan No. 1 shall pay an assessment to fund administrative and regulatory costs. The assessment may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of the employer for claims arising out of the time when the employer was enrolled under compensation plan No. 1.

(c) By April 30 of each year, the department shall notify employers described in subsections (5)(a) and (5)(b) of the percentage of the assessment that comprises the compensation plan No. 1 proportionate share of administrative and regulatory costs. Payment of the assessment provided for by this subsection (5) must be paid by the employer in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(d) If an employer fails to timely pay to the department the assessment under this section, the department may impose on the employer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(6) (a) Compensation plan No. 3, the state fund, shall pay an assessment to fund administrative and regulatory costs attributable to claims arising before July 1, 1990. The assessment may be up to 3% of the paid losses paid in the preceding calendar year for claims arising before July 1, 1990. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the assessment for administrative and regulatory costs that is attributable to claims arising before July 1, 1990.

(b) Payment of the assessment must be paid in:

(i) one installment due on July 1; or

(ii) two equal installments due on July 1 and December 31 of each year.

(c) If the state fund fails to timely pay to the department the assessment under this section, the department may impose on the state fund an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(7) (a) Each employer insured under compensation plan No. 2 or plan No. 3, the state fund, shall pay a premium surcharge to fund administrative and regulatory costs. The premium surcharge must be collected by each plan No. 2 insurer and by plan No. 3, the state fund, from each employer that it insures. The premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". The premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes. However, an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as a separate cost imposed upon insured employers.

(b) The amount to be funded by the premium surcharge may be up to 3% of the paid losses paid in the preceding calendar year by or on behalf of all plan No. 2 insurers and may be up to 3% of paid losses for claims arising on or after July 1, 1990, for plan No. 3, the state fund, plus or minus any adjustments as provided by subsection (7)(f). The amount to be funded must be divided by the total premium paid by all employers enrolled under compensation plan No. 2 or plan No. 3 during the preceding calendar year. A single premium surcharge rate, applicable to all employers enrolled in compensation plan No. 2 or plan No. 3, must be calculated annually by the department by not later than April 30. The resulting rate, expressed as a percentage, is levied against the premium paid by each employer enrolled under compensation plan No. 2 or plan No. 3 in the next fiscal year.

(c) On or before April 30 of each year, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(d) The premium surcharge must be paid whenever the employer pays a premium to the insurer. Each insurer shall collect the premium surcharge levied against every employer that it insures. Each insurer shall pay to the department all money collected as a premium surcharge within 20 days of the end of the calendar quarter in which the money was collected. If an insurer fails to timely pay to the department the premium surcharge collected under this section, the department may impose on the insurer an administrative fine of $500 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the workers' compensation administration fund.

(e) If an employer fails to remit to an insurer the total amount due for the premium and premium surcharge, the amount received by the insurer must be applied to the premium surcharge first and the remaining amount applied to the premium due.

(f) The amount actually collected as a premium surcharge in a given year must be compared to the assessment on the paid losses paid in the preceding year. Any excess amount collected must be deducted from the amount to be collected as a premium surcharge in the following year. The amount collected that is less than the assessed amount must be added to the amount to be collected as a premium surcharge in the following year.

(8) By July 1, an insurer under compensation plan No. 2 that pays benefits in the preceding calendar year but that will not collect any premium for coverage in the following fiscal year shall pay an assessment of up to 3% of paid losses paid in the preceding calendar year. The department shall determine and notify the insurer by April 30 of each year of the amount that is due by July 1.

(9) An employer that makes a first-time application for permission to enroll under compensation plan No. 1 shall pay an assessment of $500 within 15 days of being granted permission by the department to enroll under compensation plan No. 1.

(10) The department shall deposit all funds received pursuant to this section in the state treasury, as provided in this section.

(11) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, incurred while on the business of the department either within or without the state.

(12) Disbursements from the administration fund must be made after being approved by the department upon claim for disbursement.

(13) The department may assess and collect the workers' compensation regulatory assessment surcharge from uninsured employers, as defined in 39-71-501, that fail to properly comply with the coverage requirements of the Workers' Compensation Act. Any amounts collected by the department pursuant to this subsection must be deposited in the workers' compensation administration fund.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979; amd. Sec. 28, Ch. 557, L. 1987; amd. Sec. 14, Ch. 613, L. 1989; amd. Sec. 2, Ch. 558, L. 1991; amd. Sec. 2, Ch. 555, L. 1993; amd. Sec. 2, Ch. 514, L. 1995; amd. Secs. 1, 2, Ch. 385, L. 1997; amd. Secs. 3, 4, Ch. 377, L. 1999; amd. Sec. 51, Ch. 7, L. 2001; amd. Sec. 5, Ch. 214, L. 2001; amd. Sec. 3, Ch. 103, L. 2005; amd. Sec. 3, Ch. 133, L. 2005; amd. Sec. 13, Ch. 416, L. 2005; amd. Sec. 2, Ch. 117, L. 2007; amd. Sec. 15, Ch. 27, L. 2009; amd. Sec. 9, Ch. 112, L. 2009.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

39-71-202. Office of department. The department shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111; amd. Sec. 64, Ch. 613, L. 1989.

39-71-203. Powers of department — rules. (1) The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The department may adopt rules to carry out the provisions of this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814; amd. Sec. 5, Ch. 464, L. 1987; amd. Sec. 1, Ch. 525, L. 1987; amd. Sec. 15, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-204. Hearings — rules of evidence — appeal, rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) The statutory and common-law rules of evidence do not apply to a hearing before the department under this chapter. A petition for a hearing before the department must be filed within 2 years after benefits are denied.

(2) A hearing under this chapter may be conducted by telephone or by videoconference.

(3) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any order, decision, or award made by it upon good cause.

(4) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

(5) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979; amd. Sec. 6, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 103, L. 2005.

39-71-205. Department authorized to charge certain fees — disposition of. (1) The department shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.

(2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-206. Legal advisers of department and state fund — investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of this chapter.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983; amd. Sec. 16, Ch. 613, L. 1989; amd. Sec. 2, Ch. 296, L. 1993; amd. Sec. 14, Ch. 416, L. 2005.

Cross-References

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121; amd. Sec. 51, Ch. 613, L. 1989.

39-71-208. Blank forms, minutes, and records. The department shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the department and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the department.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-209. Publication of reports and bulletins authorized. The department shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

39-71-210. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-211. Fraud detection and prevention unit — expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under this chapter that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.

History: En. Sec. 3, Ch. 296, L. 1993; amd. Sec. 15, Ch. 416, L. 2005.

Cross-References

Fraud, 28-2-404 through 28-2-406.

39-71-212 through 39-71-220 reserved.

39-71-221. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844; amd. Sec. 64, Ch. 613, L. 1989.

39-71-222. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845; amd. Sec. 64, Ch. 613, L. 1989.

39-71-223. Certified copies of public records — fees. (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The department may establish fees reasonably calculated to reimburse the department for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the department are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the department contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the department shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847; amd. Sec. 64, Ch. 613, L. 1989.

39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, health care providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section.

History: En. Sec. 1, Ch. 512, L. 1993; amd. Sec. 3, Ch. 310, L. 1997; amd. Sec. 5, Ch. 377, L. 1999; amd. Sec. 4, Ch. 140, L. 2005; amd. Sec. 3, Ch. 48, L. 2007; amd. Sec. 4, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) in second sentence substituted "health care providers" for "medical providers". Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-226. Renumbered 39-71-2370. Sec. 11, Ch. 26, L. 2005.

Part 3
Miscellaneous Provisions

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the department, certified to by a member of the department or by the secretary under the official seal of the department to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the department, or by the secretary under the official seal of the department, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.
Montana Rules of Appellate Procedure, Title 25, ch. 21.
Requirement of original, Rule 1002, M.R.Ev. (see Title 26, ch. 10).
Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

39-71-302. Repealed. Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979; amd. Sec. 8, Ch. 333, L. 1989.

39-71-303. Repealed. Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 172, L. 1997.

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any authorized employee of the department for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and other information that may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for inspection will subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 555, L. 1993; amd. Sec. 10, Ch. 442, L. 1999; amd. Sec. 6, Ch. 214, L. 2001.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Insurers to file summary reports of benefits paid for injuries and miscellaneous expenses and statements of medical expenditures. (1) Each insurer shall, on or before the 15th day after each state government fiscal quarter ends, file with the department:

(a) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents;

(b) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers; and

(c) statements showing all miscellaneous amounts, other than compensation and medical expenditures, paid during the previous state fiscal quarter to or on behalf of injured workers or their beneficiaries or dependents and not otherwise reported as an expenditure for the workers' compensation administration assessment provided for in 39-71-201.

(2) An insurer that fails to file the summary report required by this section or the annual paid losses report required in 39-71-201 within 5 days after the date on which either report is due may be assessed a penalty in an amount of not less than $250 or more than $1,000 to be deposited in the workers' compensation administration fund.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979; amd. Sec. 17, Ch. 613, L. 1989; amd. Sec. 3, Ch. 558, L. 1991; amd. Sec. 7, Ch. 214, L. 2001; amd. Sec. 2, Ch. 69, L. 2005.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports — penalty. (1) Every employer insured by a plan No. 2 or a plan No. 3 insurer is required to file with the employer's insurer, under rules adopted by the department, a full and complete report of every accident, injury, or occupational disease to an employee arising out of or in the course of employment.

(2) Every insurer transacting business under this chapter shall, under rules adopted by the department, make and file with the department the reports of every injury or occupational disease.

(3) An employer or insurer who refuses or neglects to submit the reports necessary for the proper filing and review of a claim, as provided in subsection (1) or (2), shall be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An employer or insurer may contest a penalty assessment in a hearing conducted according to department rules.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010; amd. Sec. 14, Ch. 333, L. 1989; amd. Secs. 18, 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 619, L. 1993; amd. Sec. 5, Ch. 103, L. 2005; amd. Sec. 5, Ch. 140, L. 2005; amd. Sec. 10, Ch. 112, L. 2009.

39-71-308. Repealed. Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981; amd. Sec. 19, Ch. 613, L. 1989.

39-71-309. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

39-71-310 through 39-71-314 reserved.

39-71-315. Prohibited actions — penalty. (1) The following actions by a health care provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to certify the provision of the services or treatment for which compensation is claimed under this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.

(3) Subsection (1)(b) does not apply to medical services provided to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 16, Ch. 619, L. 1993; amd. Sec. 4, Ch. 516, L. 1995; amd. Sec. 11, Ch. 442, L. 1999; amd. Sec. 3, Ch. 69, L. 2005; amd. Sec. 16, Ch. 416, L. 2005; amd. Sec. 5, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) substituted "health care provider" for "medical provider". Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under this chapter is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may petition the workers' compensation court to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of this chapter.

History: **En. Sec. 7, Ch. 464, L. 1987; amd. Sec. 4, Ch. 296, L. 1993; amd. Sec. 1, Ch. 618, L. 1993; amd. Sec. 9, Ch. 619, L. 1993; amd. Sec. 12, Ch. 442, L. 1999; amd. Sec. 17, Ch. 416, L. 2005.**

39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The workers' compensation court has exclusive jurisdiction to administer or resolve a dispute concerning the reemployment preference under this section. A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing.

History: **En. Sec. 20, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 442, L. 1999; amd. Sec. 18, Ch. 416, L. 2005.**

39-71-318. Repealed. Sec. 12, Ch. 103, L. 2005.

History: En. Sec. 1, Ch. 558, L. 1991; amd. Sec. 5, Ch. 516, L. 1995; amd. Sec. 7, Ch. 276, L. 1997.

39-71-319 reserved.

39-71-320. Voluntary certification program for claims examiners — purpose — rulemaking — advisory committee — continuing education. (1) Pursuant to the public policy stated in 39-71-105, accurate and prompt claims handling practices are necessary to provide appropriate service to injured workers, employers, and health care providers. In order to further that public policy, the purpose of this section is to authorize the department to establish a voluntary certification program for claims examiners. The department shall administer the voluntary certification program.

(2) The voluntary certification program is intended to improve the handling of workers' compensation claims by:

(a) establishing minimum qualifications and procedures for certifying claims examiners;
(b) requiring continuing education for certified claims examiners;
(c) better educating certified claims examiners about changes in the law; and
(d) providing standards for the qualifications of instructors, courses, and materials.

(3) The department shall adopt rules for the certification of workers' compensation claims examiners, providing for:

(a) minimum qualifications;
(b) examination;
(c) 2-year certification and renewal;
(d) continuing education requirements; and
(e) a waiver of the examination requirement for an individual requesting certification as a claims examiner within the first 12 months after the department has adopted the initial rules under this subsection (3). The waiver is available only to an individual who has been actively engaged in the work of a claims examiner in this state, working on workers' compensation claims for 5 of the 7 years immediately preceding the individual's application for certification under this section.

(4) The department may appoint an advisory committee composed of injured workers, insurers, self-insured employers, third-party administrators, claims examiners, and members of the public to advise the department on setting standards for certification and continuing education.

(5) The department shall maintain:

(a) a list of all certified claims examiners; and
(b) the following records related to certified claims examiners:
(i) documentation of current and historical certifications;
(ii) beginning and ending dates of certifications; and
(iii) continuing education records.

(6) The training curriculum and continuing education used by insurers, self-insured employers, and third-party administrators for claims examiners must relate to the state workers' compensation system or to interactions among injured workers, medical providers, and employers. The training curriculum, course content, instructors, materials, instructional format, and the sponsoring organization must be approved by the department as qualifying for use in certification of claims examiners. The department may offer specialized training for continuing education purposes that is exempt from the approval requirements of this subsection.

(7) The department shall determine the number of credit hours to be awarded for completion of an approved training curriculum or department-approved specialized training. The department may accept continuing education credits approved by the insurance commissioner's office as provided in Title 33, chapter 17, the office of public instruction, or the state bar of Montana to satisfy the continuing education requirements for renewal of the claims examiner certification. The department, in its discretion, may accept continuing education credits from other accrediting sources.

(8) The department shall by rule adopt fees commensurate with the costs of administering the voluntary certification program. All fees collected by the department as provided in this

section must be deposited in the workers' compensation administration fund provided for in 39-71-201. The department may charge a fee for the certification program, including but not limited to fees for:

(a) initial certification, including examination;

(b) certification renewal;

(c) approval of training curricula, including continuing education courses, course content, instructors, materials, instructional format, and sponsoring organizations; and

(d) specialized training offered by the department.

History: En. Sec. 2, Ch. 125, L. 2009; amd. Sec. 6, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) in first sentence substituted "health care providers" for "medical providers". Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-321 through 39-71-324 reserved.

39-71-325. Claim summary and actuarial documentation for impaired insurer. (1) An insurer becomes impaired if the insurer:

(a) becomes insolvent;

(b) is placed in receivership or administration;

(c) declares bankruptcy; or

(d) seeks protection from its creditors.

(2) An impaired insurer shall, within 30 days of the insurer becoming impaired, furnish the department with a claim summary and actuary information relevant to each claim for which the insurer may have future liability.

History: En. Sec. 14, Ch. 117, L. 2007.

Part 4
Coverage, Liability, and Subrogation

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-401. Employments covered and exemptions — elections — notice. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers and to all employees. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following:

(a) household or domestic employment;

(b) casual employment;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a real estate, securities, or insurance salesperson paid solely by commission and without a guarantee of minimum earnings;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, umpire, or judge, at an amateur athletic event;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection (2)(k):

(i) "freelance correspondent" means a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier":

(A) means a person who provides a newspaper with the service of delivering newspapers singly or in bundles; and

(B) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as referred to in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of a trainer, assistant trainer, exercise person, or pony person who is performing services under a license issued by the board of horseracing while on the grounds of a licensed race meet;

(p) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(q) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(r) an officer of a quasi-public or a private corporation or, except as provided in subsection (3), a manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(r)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(r)(iii)(A) or (2)(r)(iii)(B);

(s) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(t) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(u) service performed to provide companionship services, as defined in 29 CFR 552.6, or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian;

(v) employment of a person performing the services of an intrastate or interstate common or contract motor carrier when hired by an individual or entity who meets the definition of a broker or freight forwarder, as provided in 49 U.S.C. 13102;

(w) employment of a person who is not an employee or worker in this state as defined in 39-71-118(10);

(x) employment of a person who is working under an independent contractor exemption certificate;

(y) employment of an athlete by or on a team or sports club engaged in a contact sport. As used in this subsection, "contact sport" means a sport that includes significant physical contact between the athletes involved. Contact sports include but are not limited to football, hockey, roller derby, rugby, lacrosse, wrestling, and boxing.

(z) a musician performing under a written contract.

(3) (a) (i) A person who regularly and customarily performs services at locations other than the person's own fixed business location shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 unless the person has waived the rights and benefits of the Workers' Compensation Act by obtaining an independent contractor exemption certificate from the department pursuant to 39-71-417.

(ii) Application fees or renewal fees for independent contractor exemption certificates must be deposited in the state special revenue account established in 39-9-206 and must be used to offset the certification administration costs.

(b) A person who holds an independent contractor exemption certificate may purchase a workers' compensation insurance policy and with the insurer's permission elect coverage for the certificate holder.

(c) For the purposes of this subsection (3), "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under the provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liability company may elect coverage for its corporate officers or managers, who are otherwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of the manager-managed limited liability company if the employer elects to be bound.

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985; amd. Sec. 1, Ch. 148, L. 1987; amd. Sec. 1, Ch. 290, L. 1987; amd. Sec. 6, Ch. 314, L. 1987; amd. Sec. 10, Ch. 464, L. 1987; amd. Sec. 2, Ch. 526, L. 1987; amd. Sec. 1, Ch. 33, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 39, Ch. 16, L. 1991; amd. Sec. 2, Ch. 573, L. 1991; amd. Sec. 4, Ch. 555, L. 1993; amd. Sec. 3, Ch. 48, L. 1995; amd. Sec. 2, Ch. 95, L. 1995; amd. Sec. 1, Ch. 112, L. 1995; amd. Sec. 1, Ch. 142, L. 1995; amd. Sec. 6, Ch. 516, L. 1995; amd. Sec. 4, Ch. 172, L. 1997; amd. Sec. 4, Ch. 310, L. 1997; amd. Sec. 1, Ch. 386, L. 1997; amd. Sec. 30, Ch. 491, L. 1997; amd. Sec. 12, Ch. 548, L. 1997; amd. Sec. 14, Ch. 442, L. 1999; amd. Sec. 1, Ch. 14, L. 2001; amd. Sec. 1, Ch. 43, L. 2001; amd. Sec. 2, Ch. 339, L. 2001; amd. Sec. 3, Ch. 83, L. 2003; amd. Sec. 1, Ch. 193, L. 2003; amd. Sec. 7, Ch. 26, L. 2005; amd. Sec. 4, Ch. 133, L. 2005; amd. Sec. 9, Ch. 448, L. 2005; amd. Sec. 1, Ch. 179, L. 2007; amd. Sec. 1, Ch. 288, L. 2007; amd. Sec. 1, Ch. 234, L. 2009; amd. Sec. 1, Ch. 450, L. 2009; amd. Sec. 1, Ch. 200, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 200 in (2)(r) inserted exception clause; inserted (3)(c)(v) referring to manager of manager-managed company engaged in construction industry; and made minor changes in style. Amendment effective July 1, 2011.

Cross-References

Regulation of real estate brokers and salespersons, Title 37, ch. 51.
Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.
Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial application and reciprocity — exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

(2) Except as provided in subsection (5), if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in the other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 480, L. 1991; amd. Sec. 3, Ch. 458, L. 1993.

Cross-References

Governor — sole official organ of communication, 2-15-201.

39-71-403. Plan three exclusive for state agencies — election of plan by public corporations — financing of self-insurance fund — exemption for university system — definitions — rulemaking. (1) (a) Except as provided in subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered to be ordinary and necessary expenses of the agency. The agency shall pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations, ordinances, or otherwise.

(b) (i) Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall manage workers' compensation insurance coverage for all state agencies.

(ii) The state fund shall provide the department of administration with all information regarding the state agencies' coverage.

(iii) Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent upon mutual agreement between the department of administration and the state fund, the state fund shall issue one or more policies for all state agencies.

(iv) In any year in which the workers' compensation premium due from a state agency is lower than in the previous year, the appropriation for that state agency must be reduced by the same amount that the workers' compensation premium was reduced and the difference must be returned to the originating fund instead of being applied to other purposes by the state agency submitting the premium.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The revenue derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions that the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) For the purposes of subsection (1)(b), the judicial branch or the legislative branch may choose not to have the department of administration manage its workers' compensation policy.

(6) The department of administration may adopt rules to implement subsection (1)(b)(i).

(7) As used in this section, the following definitions apply:

(a) "Public corporation" includes the Montana university system.

(b) (i) "State agency" means:

(A) the executive branch and its departments and all boards, commissions, committees, bureaus, and offices;

(B) the judicial branch; and

(C) the legislative branch.

(ii) The term does not include the Montana university system.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981; amd. Sec. 97, Ch. 370, L. 1987; amd. Sec. 20, Ch. 613, L. 1989; amd. Sec. 1, Ch. 665, L. 1989; amd. Sec. 1, Ch. 560, L. 1999; amd. Sec. 31, Ch. 29, L. 2001; amd. Sec. 145, Ch. 574, L. 2001; amd. Sec. 19, Ch. 416, L. 2005; amd. Sec. 1, Ch. 17, L. 2009; amd. Sec. 7, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 inserted (1)(b)(iv) relating to state agency premiums and the reduction of an appropriation. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

Independent contractor certification, 39-71-417.

39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any premium deduction is a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985; amd. Sec. 8, Ch. 637, L. 1993; amd. Sec. 8, Ch. 276, L. 1997.

Cross-References

Penalty for misdemeanor, 46-18-212.

39-71-407. Liability of insurers — limitations. (1) For workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

(3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(5) Except as provided in subsection (6), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident.

(6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

(7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed drug.

(8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(10) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(11) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

(13) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

(15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(16) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1); amd. Sec. 11, Ch. 464, L. 1987; amd. Sec. 1, Ch. 184, L. 1989; amd. Sec. 26, Ch. 619, L. 1993; amd. Sec. 8, Ch. 243, L. 1995; amd. Sec. 1, Ch. 435, L. 2003; amd. Sec. 6, Ch. 103, L. 2005; amd. Sec. 20, Ch. 416, L. 2005; amd. Sec. 8, Ch. 167, L. 2011; amd. Sec. 4, Ch. 315, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section — Code Commissioner Instruction: Chapter 167 inserted (2) relating to circumstances that do not constitute course of employment; in (3)(a) in lead-in after "39-71-119" inserted "only"; in (3)(a)(ii) after "injury" inserted "has occurred and"; in (11) at end substituted "if the employee is diagnosed with a compensable occupational disease" for "with an occupational disease that arises out of or is contracted in the course and scope of employment"; in (12) substituted "An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events" for "Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:

(a) the occupational disease is established by objective medical findings; and

(b) the events"; in (14)(a) substituted "health care provider" for "treating physician or medical panel"; and made minor changes in style. Amendment effective April 12, 2011.

Chapter 315 in (5) at beginning inserted exception clause, and at end deleted "However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply"; inserted (6) relating to use of marijuana; inserted (7) relating to use of alcohol or drugs not prescribed by a physician; and made minor changes in style. Amendment effective May 6, 2011.

Pursuant to sec. 38(1), Ch. 419, L. 2011, the Code Commissioner in (6)(a), (6)(b), (6)(c), (6)(d), and (7) substituted "use of marijuana for a debilitating medical condition" for "medical use of marijuana".

Pursuant to sec. 38(2), Ch. 419, L. 2011, the Code Commissioner in (6)(a), (6)(b), (6)(c), and (6)(d) substituted "50-46-302" for "50-46-102".

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

39-71-409. Waivers by employee invalid. (1) An agreement by an employee to waive any rights under this chapter is not valid.

(2) (a) A person who possesses and is working under a current independent contractor exemption certificate issued by the department waives all rights and benefits of the Workers' Compensation Act unless the person elects coverage pursuant to 39-71-401(3)(b).

(b) A waiver by reason of an independent contractor exemption certificate is an exception to the general prohibition of waiving the advantage of a statute enacted for a public reason as provided for in 1-3-204.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803; amd. Sec. 10, Ch. 448, L. 2005.

39-71-410. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of the injuries or death. The Workers' Compensation Act binds the employee and, in case of death, binds the employee's personal representative and all persons having any right or claim to compensation for the employee's injury or death, as well as the employer and the servants and employees of the employer and those conducting the employer's business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979; amd. Sec. 1543, Ch. 56, L. 2009.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever injury, occupational disease, or death occurs to an employee while performing the duties of employment and the event is caused by the act or omission of some persons or corporations other than the employee's employer or the servants or employees of the employee's employer, the employee or in case of death the employee's heirs or personal representative, in addition to the right to receive compensation under this chapter, has a right to prosecute any cause of action that the employee or heirs may have for damages against the persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1544, Ch. 56, L. 2009.

39-71-413. Liability of employer or fellow employee for intentional and deliberate acts — additional cause of action — intentional injury defined. (1) If an employee is intentionally injured by an intentional and deliberate act of the employee's employer or by the intentional and deliberate act of a fellow employee while performing the duties of employment, the employee or in case of death the employee's heirs or personal representatives, in addition to the right to receive compensation under the Workers' Compensation Act, have a cause of action for damages against the person whose intentional and deliberate act caused the intentional injury.

(2) An employer is not vicariously liable under this section for the intentional and deliberate acts of an employee.

(3) As used in this section, "intentional injury" means an injury caused by an intentional and deliberate act that is specifically and actually intended to cause injury to the employee injured and there is actual knowledge that an injury is certain to occur.

History: **En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 229, L. 2001.**

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third-party action, the employee shall give the insurer reasonable notice of the intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorney fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorney fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorney fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.

(6) (a) The insurer is entitled to full subrogation rights under this section, unless the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.

(b) If a survival action does not exist and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation. A dispute between the insurer and claimant concerning subrogation is a dispute subject to the mediation requirements of 39-71-2401.

History: **En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2; amd. Sec. 12, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 323, L. 1991; amd. Sec. 2, Ch. 574, L. 1991; amd. Sec. 1, Ch. 459, L. 1993; amd. Sec. 5, Ch. 172, L. 1997.**

39-71-415. Procedure for resolving disputes regarding independent contractor status.

(1) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, either party may, after

mediation pursuant to department rules, petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(2) (a) A dispute involving an employer, a worker, or the department and involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution.

(b) (i) A decision of the independent contractor central unit is final unless a party dissatisfied with the decision requests mediation pursuant to department rules within 15 days of the mailing of the decision by the independent contractor central unit.

(ii) At the conclusion of the mediation process, the mediator shall issue a report summarizing the status of the proceeding and shall mail a copy of the report to the parties.

(c) If after mediation the parties have not resolved their dispute concerning a worker's status as an independent contractor or an employee, a party may appeal the decision of the independent contractor central unit by filing a petition with the workers' compensation court within 30 days of the mailing of the mediator's report.

(d) An appeal from the independent contractor central unit to the workers' compensation court brought pursuant to this subsection (2) is a new proceeding.

History: En. Sec. 7, Ch. 314, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 15, Ch. 442, L. 1999; amd. Sec. 8, Ch. 214, L. 2001; amd. Sec. 11, Ch. 448, L. 2005; amd. Sec. 3, Ch. 117, L. 2007.

39-71-416. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 2, Ch. 243, L. 1995.

39-71-417. Independent contractor certification. (1) (a) (i) Except as provided in subsection (1)(a)(ii), a person who regularly and customarily performs services at a location other than the person's own fixed business location shall apply to the department for an independent contractor exemption certificate unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(ii) An officer or manager who is exempt under 39-71-401(2)(r)(iii) or (2)(r)(iv) may apply, but is not required to apply, to the department for an independent contractor exemption certificate.

(b) A person who meets the requirements of this section and receives an independent contractor exemption certificate is not required to obtain a personal workers' compensation insurance policy.

(c) For the purposes of this section, "person" means:

(i) a sole proprietor;

(ii) a working member of a partnership;

(iii) a working member of a limited liability partnership;

(iv) a working member of a member-managed limited liability company; or

(v) a manager of a manager-managed limited liability company that is engaged in the work of the construction industry as defined in 39-71-116.

(2) The department shall adopt rules relating to an original application for or renewal of an independent contractor exemption certificate. The department shall adopt by rule the amount of the fee for an application or certificate renewal. The application or renewal must be accompanied by the fee.

(3) The department shall deposit the application or renewal fee in an account in the state special revenue fund to pay the costs of administering the program.

(4) (a) To obtain an independent contractor exemption certificate, the applicant shall swear to and acknowledge the following:

(i) that the applicant has been and will continue to be free from control or direction over the performance of the person's own services, both under contract and in fact; and

(ii) that the applicant is engaged in an independently established trade, occupation, profession, or business and will provide sufficient documentation of that fact to the department.

(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control.

(5) (a) An applicant for an independent contractor exemption certificate shall submit an application under oath on a form prescribed by the department and containing the following:

(i) the applicant's name and address;

(ii) the applicant's social security number;

(iii) each occupation for which the applicant is seeking independent contractor certification; and

(iv) other documentation as provided by department rule to assist in determining if the applicant has an independently established business.

(b) The department shall adopt a retention schedule that maintains copies of documents submitted in support of an initial application or renewal application for an independent contractor exemption certificate for a minimum of 3 years after an application has been received by the department. The department shall, to the extent feasible, produce renewal applications that reduce the burden on renewal applicants to supply information that has been previously provided to the department as part of the application process.

(c) An applicant who applies on or after July 1, 2011, to renew an independent contractor exemption certificate is not required to submit documents that have been previously submitted to the department if:

(i) the applicant certifies under oath that the previously submitted documents are still valid and current; and

(ii) the department, if it considers it necessary, independently verifies a specific document or decides that a document has not expired pursuant to the document's own terms and is therefore still valid and current.

(6) The department shall issue an independent contractor exemption certificate to an applicant if the department determines that an applicant meets the requirements of this section.

(7) (a) When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor.

(b) A person working under an approved independent contractor exemption certificate has waived all rights and benefits under the Workers' Compensation Act and is precluded from obtaining benefits unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(c) For the purposes of the Workers' Compensation Act, a person is working under an independent contractor exemption certificate if:

(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and

(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee.

(8) Once issued, an independent contractor exemption certificate remains in effect for 2 years unless:

(a) suspended or revoked pursuant to 39-71-418; or

(b) canceled by the independent contractor.

(9) If the department's independent contractor central unit denies an application for an independent contractor exemption certificate, the applicant may contest that decision as provided in 39-71-415(2).

History: En. Sec. 1, Ch. 448, L. 2005; amd. Sec. 4, Ch. 117, L. 2007; amd. Sec. 2, Ch. 340, L. 2007; amd. Sec. 1, Ch. 120, L. 2009; amd. Sec. 2, Ch. 200, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 200 inserted (1)(c)(v) referring to manager of manager-managed company engaged in construction industry; and made minor changes in style. Amendment effective July 1, 2011.

39-71-418. Suspension or revocation of independent contractor exemption certificate. (1) The department may suspend an independent contractor exemption certificate for a specific business relationship if the department determines that the employing unit exerts or retains a right of control to a degree that causes a certificate holder to violate the provisions of 39-71-417(4).

(2) The department may revoke an independent contractor exemption certificate after determining that the certificate holder:

(a) made misrepresentations in the application affidavit or certificate renewal form;

(b) altered or amended the application form, the renewal application form, other supporting documentation required by the department, or the independent contractor exemption certificate;

(c) failed to cooperate with the department in providing information relevant to the continued validity of the holder's certificate; or

(d) does not have an independently established business as required by 39-71-417(4).

(3) A decision by the department to suspend or revoke an independent contractor exemption certificate takes effect upon issuance of the decision. Suspension or revocation of the independent contractor exemption certificate does not invalidate the certificate holder's waiver of the rights and benefits of the Workers' Compensation Act for the period prior to notice to the hiring agent by the department of the department's decision to suspend or revoke the independent contractor exemption certificate.

(4) A decision by the department's independent contractor central unit to suspend or revoke an independent contractor exemption certificate may be contested in the same manner as provided in 39-71-415(2).

History: En. Sec. 2, Ch. 448, L. 2005; amd. Sec. 5, Ch. 117, L. 2007; amd. Sec. 2, Ch. 150, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 150 in (2)(a) at beginning substituted "made" for "provided"; inserted (2)(d) relating to having an independently established business; and made minor changes in style. Amendment effective July 1, 2011.

39-71-419. Independent contractor violations — penalty. (1) A person may not:

(a) perform work as an independent contractor without first:

(i) obtaining from the department an independent contractor exemption certificate unless the individual is not required to obtain an independent contractor exemption certificate pursuant to 39-71-417(1)(a); or

(ii) electing to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3;

(b) perform work as an independent contractor when the department has revoked or denied the independent contractor's exemption certificate;

(c) transfer to another person or allow another person to use an independent contractor exemption certificate that was not issued to that person;

(d) alter or falsify an independent contractor exemption certificate; or

(e) misrepresent the person's status as an independent contractor.

(2) An employer may not:

(a) require an employee through coercion, misrepresentation, or fraudulent means to adopt independent contractor status to avoid the employer's obligations to provide workers' compensation coverage; or

(b) exert control to a degree that causes the independent contractor to violate the provisions of 39-71-417(4).

(3) In addition to any other penalty or sanction provided in this chapter, a person or employer who violates a provision of this section is subject to a fine to be assessed by the department of up to $1,000 for each violation. The department shall deposit the fines in the uninsured employers' fund. The lien provisions of 39-71-506 apply to any assessed fines.

(4) A person or employer who disputes a fine assessed by the department pursuant to this section may file an appeal with the department within 30 days of the date on which the fine was assessed. If, after mediation, the issue is not resolved, the issue must be transferred to the workers' compensation court for resolution.

History: En. Sec. 3, Ch. 448, L. 2005.

39-71-420 reserved.

39-71-421. Financial incentives to institute safety programs. Insurers may provide financial incentives to an employer who implements a formal safety program. An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

History: En. Sec. 9, Ch. 464, L. 1987; amd. Sec. 21, Ch. 613, L. 1989.

39-71-422 through 39-71-425 reserved.

39-71-426. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 1, Ch. 388, L. 1989; amd. Sec. 5, Ch. 480, L. 1991.

39-71-427. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 2, Ch. 388, L. 1989.

39-71-428. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. Sec. 3, Ch. 388, L. 1989.

39-71-429 and 39-71-430 reserved.

39-71-431. Repealed. Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 12, Ch. 613, L. 1989; amd. Sec. 5, Ch. 323, L. 1991.

39-71-432. Definitions. As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

History: En. Sec. 20, Ch. 619, L. 1993; amd. Sec. 7, Ch. 516, L. 1995; amd. Sec. 6, Ch. 172, L. 1997; amd. Sec. 6, Ch. 377, L. 1999.

39-71-433. Group purchase of workers' compensation insurance. (1) Two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) A group formed under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but may not refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(3) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(4) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, the eligibility requirements to join the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management.

History: En. Sec. 21, Ch. 619, L. 1993; amd. Sec. 8, Ch. 516, L. 1995; amd. Sec. 5, Ch. 310, L. 1997.

39-71-434. Deductible insurance policy provision for medical benefits. (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least $500.

(2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

(5) If an insured employer chooses to accept a medical deductible, then for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses.

History: **En. Sec. 1, Ch. 641, L. 1989; amd. Sec. 1, Ch. 666, L. 1991; amd. Sec. 1, Ch. 248, L. 1993.**

39-71-435. Workers' compensation and employers' liability insurance — optional deductibles. (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) The advisory organization designated under 33-16-1023 may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the designated advisory organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201 and 39-71-915, liability for assessments must be ascertained without regard to application of any deductible, whether the employer or the insurer pays the losses. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

History: **En. Sec. 8, Ch. 619, L. 1993; amd. Sec. 24, Ch. 186, L. 1995; amd. Sec. 9, Ch. 214, L. 2001.**

39-71-436 through 39-71-440 reserved.

39-71-441. Tribal employment coverage. The department may, as provided in Title 18, chapter 11, enter into an agreement with a tribal government to recognize, with the same effect as the exclusive remedy and benefits under plans No. 1, 2, and 3, tribal workers' compensation plans or self-insured plans that the department determines provide adequate coverage to persons who are:

(1) employed by an enrolled tribal member or by an association, business, corporation, or other entity at least 51% of which is owned by one or more enrolled tribal members; and

(2) working outside the exterior boundaries of an Indian reservation.

History: **En. Sec. 1, Ch. 112, L. 2009.**

Part 5
Uninsured Employers

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-501. Definition of uninsured employer. For the purposes of 39-71-501, 39-71-503 through 39-71-511, 39-71-515 through 39-71-520, and 39-71-541, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979; amd. Sec. 179, Ch. 42, L. 1997; amd. Sec. 7, Ch. 377, L. 1999; amd. Sec. 11, Ch. 112, L. 2009.

39-71-502. Repealed. Sec. 22, Ch. 377, L. 1999.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 13, Ch. 464, L. 1987; amd. Sec. 9, Ch. 276, L. 1997.

39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 14, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 555, L. 1993; amd. Sec. 9, Ch. 516, L. 1995; amd. Sec. 6, Ch. 310, L. 1997; amd. Sec. 35, Ch. 422, L. 1997; amd. Sec. 8, Ch. 377, L. 1999; amd. Sec. 18, Ch. 389, L. 1999; amd. Sec. 2, Ch. 193, L. 2003; amd. Sec. 4, Ch. 48, L. 2007.

Cross-References

Investments, Title 17, ch. 6, part 2.

39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much

premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

(b) The fund shall collect from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to or on behalf of an injured employee of the uninsured employer.

(c) In addition to any amounts recovered under subsections (1)(a) and (1)(b), the fund shall collect a penalty of $200 from an employer that fails to obtain Montana workers' compensation insurance within 30 days of notice of the requirement.

(2) (a) An uninsured employer that fails to make timely penalty or claim reimbursement payments required under this part must be assessed a late fee of $50 for each late payment.

(b) Any unpaid balance owed to the fund under this part must accrue interest at 12% a year or 1% a month or fraction of a month. Interest on unpaid balances accrues from the date of the original billing.

(c) Late fees and interest assessed pursuant to this subsection (2) must be deposited into the fund for payment of administrative expenses and benefits.

(3) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds collected by the department from the uninsured employer pursuant to subsection (1)(b).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 661, L. 1991; amd. Sec. 10, Ch. 516, L. 1995; amd. Sec. 3, Ch. 284, L. 1997; amd. Sec. 7, Ch. 310, L. 1997; amd. Sec. 3, Ch. 193, L. 2003; amd. Sec. 4, Ch. 69, L. 2005.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.
Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Lien for payment of unpaid penalties, fees, and interest — levy and execution. (1) (a) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in 39-71-504(1)(a), (1)(c), and (2), the unpaid penalties, fees, and interest have the effect of a judgment against the employer at the time the payments become due. After issuing an order to the uninsured employer requiring payment of penalties, fees, and interest and after the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is entered on the docket, it becomes a lien upon all real property of the uninsured employer. The department may enforce the judgment at any time within 10 years of creation of the lien.

(b) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under subsection (1).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 555, L. 1993; amd. Sec. 4, Ch. 193, L. 2003; amd. Sec. 12, Ch. 112, L. 2009.

39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies. (1) When the department discovers an uninsured employer, it shall order the employer to cease operations until the employer has elected to be bound by a compensation plan.

(2) When the department discovers a person, business, or other entity functioning as a prime contractor that has subcontracted for the services of an uninsured employer, it may order the person, business, or other entity functioning as a prime contractor to cause all operations performed by the uninsured employer to cease at worksites controlled by the prime contractor until the uninsured employer has elected to be bound by a compensation plan. If after 3 business days following the order by the department the person, business, or other entity functioning as a

prime contractor has not complied with the order, the department may order the prime contractor to cease all operations at the affected worksites.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) A person, business, or other entity functioning as a prime contractor that does not comply with the department's order to cease all operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action. In addition, the department may assess a penalty against the person, business, or other entity functioning as a prime contractor of not more than $1,000 per day for each day of violation.

(5) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(6) The remedies provided in 39-71-506 and subsections (3) through (5) of this section are not mutually exclusive and may be pursued concurrently.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6); amd. Sec. 1, Ch. 586, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 516, L. 1995.

Cross-References

Misdemeanor defined, 45-2-101.

Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies — limitation of liability of employee to third-party providers — rights of third-party providers. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(a) a claim for benefits from the uninsured employers' fund;

(b) a damage action against the employer in accordance with 39-71-509;

(c) an independent action against an employer as provided in 39-71-515; or

(d) any other civil remedy provided by law.

(2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.

(3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985; amd. Sec. 5, Ch. 48, L. 2007.

39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries sustained, it is not a defense for the employer that the:

(1) employee was negligent unless the negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of the employee's employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985; amd. Sec. 1545, Ch. 56, L. 2009.

39-71-510. Limitation on benefit entitlement under fund. (1) Notwithstanding the provisions of 39-71-407, 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund.

Benefits from the fund must be paid in accordance with the money in the fund. If the department determines at any time that the money in the fund is not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 377, L. 1999; amd. Sec. 6, Ch. 48, L. 2007.

39-71-511. Setoffs to claim against fund. A claim for benefits from the uninsured employers' fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In an action described in subsection (1), prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not enrolled on the date of the injury or death.

(3) It is not a defense to an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting the failure to exist.

(4) The amount of recoverable damages in an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to damages.

History: En. Sec. 6, Ch. 601, L. 1985; amd. Sec. 1546, Ch. 56, L. 2009.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 shall bring the action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant interim relief that it considers appropriate, including but not limited to injunctive relief, attachment, or receivership. The court may request the workers' compensation judge to determine the amount of recoverable damages due to the employee.

History: En. Sec. 7, Ch. 601, L. 1985; amd. Sec. 12, Ch. 516, L. 1995.

Cross-References

Venue generally, Title 25, ch. 2.
Attachment, Title 27, ch. 18.
Injunctions, Title 27, ch. 19.
Receivership, Title 27, ch. 20.

39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate.

History: En. Sec. 8, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 180, Ch. 42, L. 1997; amd. Sec. 10, Ch. 377, L. 1999.

39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against the employer's remaining liability under those sections.

History: En. Sec. 9, Ch. 601, L. 1985; amd. Sec. 1547, Ch. 56, L. 2009.

39-71-519. Settlement. The department, the uninsured employer, the injured employee or the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501, 39-71-503 through 39-71-511, and 39-71-515 through 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance with 39-71-741.

History: En. Sec. 10, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 181, Ch. 42, L. 1997; amd. Sec. 11, Ch. 377, L. 1999.

39-71-520. Time limit to appeal to mediation — petitioning workers' compensation court — failure to settle or petition. (1) A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final.

(2) (a) If the parties fail to reach a settlement through the mediation process, any party who disagrees with the department's determination may file a petition before the workers' compensation court.

(b) A party's petition must be filed within 60 days of the mailing of the mediator's report provided for in 39-71-2411 unless the parties stipulate in writing to a longer time period for filing the petition.

(c) If a settlement is not reached through mediation and a petition is not filed within 60 days of the mailing of the mediator's report, the determination by the department is final.

(d) A mediator's report is not a determination by the department for the purposes of this section. A determination by the department is final if an appeal to mediation described in subsection (1) or a petition described in subsection (2)(a) is not filed within the required time period.

History: En. Sec. 19, Ch. 555, L. 1993; amd. Sec. 5, Ch. 193, L. 2003; amd. Sec. 13, Ch. 112, L. 2009.

39-71-521. Burden of proof — insurance coverage. (1) In a proceeding brought by the department or an employer to resolve the issue of the existence of workers' compensation insurance coverage for that employer, the initial burden of proof is on the department to demonstrate that:

(a) the employer is required to have workers' compensation insurance coverage; and

(b) either:

(i) the database of the recognized agent providing proof of coverage indicates that no coverage is reported by an insurer to cover the employer's Montana operations; or

(ii) the department confirms with the insurer that reported coverage for the employer that the policy previously covering the employer's Montana operations has been canceled by that insurer.

(2) The burden then shifts to the employer to demonstrate that the employer is not required either to have workers' compensation insurance coverage or to produce a valid workers' compensation insurance policy covering the employer's Montana operations during the period of time in question. A valid workers' compensation insurance policy is one acknowledged by the insurer to be valid or adjudged to be valid by a court of competent jurisdiction.

History: En. Sec. 1, Ch. 214, L. 2001.

39-71-522. Inspection of construction sites — public policy — penalty. (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of

the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;
(ii) a building permit;
(iii) an electrical permit;
(iv) an elevator permit;
(v) a mechanical permit; or
(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

History: En. Sec. 1, Ch. 48, L. 2007.

39-71-523 and 39-71-524 reserved.

39-71-525. Confidentiality of records — exception for use by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under this chapter or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.

History: En. Sec. 21, Ch. 377, L. 1999; amd. Sec. 22, Ch. 416, L. 2005.

39-71-526 through 39-71-530 reserved.

39-71-531. Repealed. Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 1, Ch. 467, L. 1993.

39-71-532. Repealed. Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 2, Ch. 467, L. 1993; amd. Sec. 46, Ch. 18, L. 1995.

39-71-533. Repealed. Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 3, Ch. 467, L. 1993.

39-71-534. Repealed. Sec. 9, Ch. 172, L. 1997; Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 4, Ch. 467, L. 1993.

39-71-535. Collection of penalties, claim costs, late fees, and interest — liability for payment of collection costs. (1) If the department is unable to collect penalties, claim costs, late fees, or interest assessed pursuant to the provisions of this part, the department may assign the debt to a collection service or transfer the debt to the department of revenue pursuant to Title 17, chapter 4, part 1.

(2) (a) The reasonable collection costs of a collection service, if approved by the department, or assistance costs charged the department by the department of revenue pursuant to 17-4-103(3) may be added to the debt for which collection is being sought.

(b) (i) All money collected by the department of revenue is subject to the provisions of 17-4-106.

(ii) All money collected by a collection service must be paid to the department, except that the collection service may retain those collection costs or, if the total debt is not collected, that portion of collection costs that are approved by the department.

History: En. Sec. 6, Ch. 193, L. 2003.

39-71-536 through 39-71-540 reserved.

39-71-541. Uninsured employer as party to benefits disputes — indemnification by uninsured employer for benefits paid — lien for payment — levy and execution. (1) An uninsured employer or an employer alleged to be uninsured is a party to all disputes concerning any benefits for which the employer may become obligated to indemnify the department pursuant to 39-71-504(1)(b).

(2) (a) After mediation pursuant to department rules, an uninsured employer or an employer alleged to be uninsured is joined as a party when a dispute over benefits is brought before the workers' compensation judge pursuant to 39-71-2905.

(b) The workers' compensation judge may enter a judgment, including a default judgment, requiring an uninsured employer to indemnify the department with respect to any benefits paid or ordered payable by the department in relation to the claim.

(c) If a judgment ordered under subsection (2)(b) includes a specific amount paid or ordered payable, the department may issue to the uninsured employer a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(3) (a) An uninsured employer is obligated to make claim reimbursements as provided in 39-71-504(1)(b), plus the interest and other charges assessed on the claim reimbursement as provided in 39-71-504(2), when demand for those payments is made to the uninsured employer.

(b) If the uninsured employer does not make the payments and does not dispute the obligation in the manner provided by 39-71-520, the department may issue a certificate listing the amount of payment due and directing the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. The judgment becomes a lien on all real property of the uninsured employer from the time of being entered on the docket.

(4) A judgment lien filed pursuant to this section may be renewed for another 10-year period upon motion of the lienholder or by a judgment for that purpose.

History: En. Sec. 3, Ch. 112, L. 2009.

Part 6
Claims for Benefits

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-601. Statute of limitation on presentment of claim — waiver. (1) Except for a claim for benefits for occupational diseases pursuant to subsections (3) and (4), all claims in the case of personal injury or death must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;
(b) latent injury; or
(c) equitable estoppel.

(3) When a claimant seeks benefits for an occupational disease, the claimant's claims for benefits must be in writing, signed by the claimant or the claimant's representative, and presented to the employer, the employer's insurer, or the department within 1 year from the date that the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death

benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date that the beneficiary knew or should have known that the decedent's death was related to an occupational disease.

(4) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601; amd. Sec. 1, Ch. 254, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 619, L. 1993; amd. Sec. 16, Ch. 442, L. 1999; amd. Sec. 23, Ch. 416, L. 2005; amd. Sec. 14, Ch. 112, L. 2009.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability — statute of limitations extended, 27-2-401.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within thirty days — exception. (1) A claim to recover benefits under the Workers' Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

(2) If a sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under this chapter is injured in an accident, the sole proprietor, partner, manager, member, or corporate officer or an appointed designee shall, within 30 days, notify the insurer of the time and location of the accident and the nature of the injury.

(3) This section does not apply to occupational diseases.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979; amd. Sec. 1, Ch. 352, L. 1987; amd. Sec. 9, Ch. 243, L. 1995; amd. Sec. 24, Ch. 416, L. 2005.

39-71-604. Application for compensation — disclosure and communication without prior notice of health care information. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and proof of other matters that may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) A signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently

claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information, as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court or as otherwise provided by law.

(3) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (2), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (2) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

(4) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979; amd. Sec. 2, Ch. 525, L. 1987; amd. Sec. 22, Ch. 613, L. 1989; amd. Sec. 4, Ch. 558, L. 1991; amd. Sec. 1, Ch. 464, L. 2003.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985; amd. Sec. 15, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 558, L. 1991; amd. Sec. 3, Ch. 619, L. 1993; amd. Sec. 10, Ch. 276, L. 1997; amd. Sec. 1, Ch. 218, L. 1999; amd. Sec. 12, Ch. 377, L. 1999; amd. Sec. 1, Ch. 141, L. 2005.

Cross-References

Procedural rules on physical and mental exams, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer. (1) Each insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation signed by the claimant or the claimant's representative, either accept or deny the claim and, if denied, shall inform the claimant and the department in writing of the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer that it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 619, L. 1993; amd. Sec. 13, Ch. 630, L. 1993; amd. Sec. 11, Ch. 276, L. 1997.

39-71-607. Suspension of payments by insurer pending receipt of medical information. Under rules adopted by the department, an insurer may suspend compensation payments pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 619, L. 1993.

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice — limitations on payments over ninety days. (1) An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without the payments being construed as an admission of liability or a waiver of any right of defense.

(2) An insurer may not make payments pursuant to this section for more than 90 days without:

(a) written consent of the claimant; or

(b) approval of the department.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 103, L. 2005.

39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required — criteria for conversion of benefits. (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer shall give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity. Unless the claimant is found, at maximum healing, to be without a permanent physical impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits:

(a) must have a physician's determination that the claimant has reached medical stability;

(b) must have a physician's determination of the claimant's physical restrictions resulting from the industrial injury;

(c) must have a physician's determination, based on the physician's knowledge of the claimant's job analysis prepared by a rehabilitation provider, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or on another job for which the claimant is suited by age, education, work experience, and physical condition;

(d) shall give notice to the claimant of the insurer's receipt of the report of the physician's determinations required pursuant to subsections (2)(a) through (2)(c). The notice must be attached to a copy of the report.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979; amd. Sec. 5, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 243, L. 1995; amd. Sec. 1, Ch. 174, L. 2001.

39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing or mediation — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers' compensation court or prior to mediation, but the biweekly compensation benefits may not be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. A proceeding in the workers' compensation court brought pursuant to this section is a new proceeding and is not subject to mediation. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 377, L. 1999; amd. Sec. 17, Ch. 442, L. 1999; amd. Sec. 10, Ch. 214, L. 2001.

39-71-611. Costs and attorney fees payable on denial of claim or termination of benefits later found compensable — barring of attorney fees under common fund and other doctrines. (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorney fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(3) Attorney fees may be awarded only under the provisions of subsection (1) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979; amd. Sec. 16, Ch. 464, L. 1987; amd. Sec. 2, Ch. 464, L. 2003.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-612. Costs and attorney fees that may be assessed against insurer by workers' compensation judge — barring of attorney fees under common fund or other doctrines. (1) If an insurer pays or submits a written offer of payment of compensation under this chapter but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, reasonable attorney fees and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorney fees under subsection (1) may be made only if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

(4) Attorney fees may be awarded only under the provisions of subsections (1) and (2) and may not be awarded under the common fund doctrine or any other action or doctrine in law or equity.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985; amd. Sec. 17, Ch. 464, L. 1987; amd. Sec. 3, Ch. 464, L. 2003; amd. Sec. 25, Ch. 416, L. 2005.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-613. Regulation of attorney fees — forfeiture of fee for noncompliance — return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the fees, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any fees that the attorney collected or was entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, the claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

(5) (a) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing.

(b) The parties to a dispute referred to in subsection (5)(a) may voluntarily request a mediator appointed by the department and proceed to nonbinding mediation.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619; amd. Sec. 18, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 235, L. 1995; amd. Sec. 18, Ch. 442, L. 1999; amd. Sec. 15, Ch. 112, L. 2009.

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-71-614. Calculation of attorney fees — limitation. (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted.

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: En. Sec. 2, Ch. 575, L. 1985; amd. Sec. 19, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-615. Payment of medical claims without acceptance of liability. (1) An insurer may pay a medical claim that is based upon the report of a nonwage loss injury or occupational disease without the payments being construed as an acceptance of liability for the claim.

(2) An insurer shall, within 10 days of making payment under subsection (1), notify the worker of the payment of the medical claim without acceptance of liability.

(3) Upon written request by a worker for the payment of indemnity benefits or for a determination of liability, the insurer shall investigate the claim to determine liability for the injury or occupational disease under 39-71-606 or 39-71-608.

History: En. Sec. 3, Ch. 243, L. 1995.

Part 7
Compensation and Benefits Generally

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.
Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for temporary total disability — exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

(2) The determination of temporary total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a

period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981; amd. Sec. 21, Ch. 464, L. 1987; amd. Sec. 4, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 52, L. 1991; amd. Sec. 5, Ch. 296, L. 1993; amd. Sec. 25, Ch. 619, L. 1993; amd. Sec. 11, Ch. 243, L. 1995; amd. Sec. 1, Ch. 121, L. 2001.

39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of objective medical findings.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 $\frac{2}{3}$% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases in which it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981; amd. Sec. 22, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 9, Sp. L. June 1989; amd. Sec. 3, Ch. 574, L. 1991; amd. Sec. 6, Ch. 296, L. 1993; amd. Sec. 27, Ch. 619, L. 1993; amd. Sec. 12, Ch. 243, L. 1995; amd. Sec. 1, Ch. 138, L. 2003.

39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease that:

(i) is not based exclusively on complaints of pain;

(ii) is established by objective medical findings; and

(iii) is more than zero.

(2) When a worker receives a Class 2 or greater class of impairment as converted to the whole person, as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition, and has no actual wage loss

as a result of the compensable injury or occupational disease, the worker is eligible to receive payment for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 400 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (4) must be determined by adding all of the following applicable percentages to the whole person impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 $\frac{2}{3}$% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the department pursuant to 39-71-741(5).

(8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(10) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1; amd. Sec. 23, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 9, Sp. L. June 1989; amd. Sec. 4, Ch. 574, L. 1991; amd. Sec. 13, Ch. 243, L. 1995; amd. Sec. 182, Ch. 42, L. 1997; amd. Sec. 12, Ch. 276, L. 1997; amd. Sec. 4, Ch. 464, L. 2003; amd. Sec. 8, Ch. 103, L. 2005; amd. Sec. 1, Ch. 36, L. 2011; amd. Sec. 9, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 36 in (7) at end substituted "39-71-741(5)" for "39-71-741(3)". Amendment effective March 23, 2011.

Chapter 167 in (1)(b) in lead-in inserted "as determined by the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition must be a direct result of the compensable injury or occupational disease"; in (1)(b)(iii) at end deleted "as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment"; in (2) substituted current language for "When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only"; in (3) at end substituted "400 weeks" for "375 weeks"; in (5) in lead-in near end inserted "whole person"; in (7) near middle substituted "payments" for "conversions" and at end substituted "39-71-741(5)" for "39-71-741(3)"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury or occupational disease and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services, including prescription drugs for conditions that are a direct result of the compensable injury or occupational disease, for those periods specified in this section.

(b) Subject to the limitations in this chapter, the insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a health care provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. The rules must exclude from reimbursement:

(A) 100 miles of automobile travel for each calendar month unless the travel is requested or required by the insurer pursuant to 39-71-605;

(B) travel to a health care provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides, unless the travel is requested by the insurer; and

(D) travel for unauthorized treatment or disallowed procedures.

(iii) An insurer is not liable for injuries or conditions that result from an accident that occurs during travel or treatment, except that the insurer retains liability for the compensable injuries and conditions for which the travel and treatment were required.

(e) Pursuant to rules adopted by the department, an insurer shall reimburse a catastrophically injured worker's family or, if a family member is unavailable, a person designated by the injured worker or approved by the insurer for travel assistance expenditures in an amount not to exceed $2,500 to be used as a match to those funds raised by community service organizations to help defray the costs of travel and lodging expenses incurred by the family member or designated person when traveling to be with the injured worker. These funds must be paid in addition to any travel expenses paid by an insurer for a travel companion when it is medically necessary for a travel companion to accompany the catastrophically injured worker.

(f) (i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

(g) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(g) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) (a) The department shall annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. Regardless of the date of injury, payment for medical services is based on the fee schedule rates in this section in effect on the date on which the medical service is provided. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(b) (i) The department may not set the rate for medical services at a rate greater than 10% above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage within this state who use the resource-based relative value scale to determine fees for covered services. To be included in the rate determination, the insurer or third-party administrator must occupy at least 1% of the market share for group health insurance policies as reported annually to the state auditor.

(ii) The insurers or third-party administrators included under subsection (2)(b)(i) shall provide their standard conversion rates to the department.

(iii) The department may use the conversion rates only for the purpose of determining average conversion rates under this subsection (2).

(iv) The department shall maintain the confidentiality of the conversion rates.

(c) From July 1, 2011, through June 30, 2013, the fee schedules established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services and as adopted by the department on December 31, 2010, regardless of where services are provided:

(i) the American medical association current procedural terminology codes;

(ii) the healthcare common procedure coding system;

(iii) the medicare severity diagnosis-related groups;

(iv) the ambulatory payment classifications;

(v) the ratio of costs to charges for each hospital;

(vi) the national correct coding initiative edits; and

(vii) the relative value units as adjusted annually using the most recently published resource- based relative value scale.

(d) On or after July 1, 2013, the fee schedule rates established in subsection (2)(b) must be based on the following standards as adopted by the centers for medicare and medicaid services, regardless of where services are provided:

(i) the American medical association current procedural terminology codes, as those codes exist on March 31 of each year;

(ii) the healthcare common procedure coding system, as those codes and their relative weights exist on March 31 of each year;

(iii) the medicare severity diagnosis-related groups, as those codes and their relative weights exist on October 1 of each year;

(iv) the ambulatory payment classifications, as those codes and their relative weights exist on March 31 of each year;

(v) the ratio of costs to charges for each hospital, as those codes exist on October 1 of each year;

(vi) the national correct coding initiative edits, as those codes exist on March 31 of each year; and

(vii) the relative value units in the published resource-based relative value scale, as those codes exist on March 31 of each year.

(e) The department may establish additional codes and coding standards for use by providers when billing for medical services under this section.

(f) The rates in effect through June 30, 2013, may not be less than the rates for medical services in effect as of December 31, 2010.

(3) (a) The department shall establish by rule evidence-based utilization and treatment guidelines for primary and secondary medical services. There is a rebuttable presumption that the adopted utilization and treatment guidelines establish compensable medical treatment for an injured worker.

(b) An insurer is not responsible for treatment or services that do not fall within the utilization and treatment guidelines adopted by the department unless the provider obtains prior authorization from the insurer. If prior authorization is not requested or obtained from the insurer, an injured worker is not responsible for payment of the medical treatment or services.

(c) The department shall hire a medical director. The department may establish by rule an independent medical review process for treatment or services denied by an insurer pursuant to this subsection (3) prior to mediation under 39-71-2401.

(d) The department, in consultation with health care providers with relevant experience and education, shall provide for an annual review of the evidence-based utilization and treatment guidelines to consider amendments or changes to the guidelines.

(4) For services available in Montana, insurers may pay facilities located outside Montana according to the workers' compensation fee schedule of the state where the medical service is performed.

(5) (a) An insurer shall make payments at the fee schedule rate within 30 days of receipt of medical bills for which a claim has been accepted and for which no other disputes exist. Disputes must be defined by the department by rule.

(b) Any unpaid balance under this subsection (5) accrues interest at 12% a year or 1% a month or a fraction of a month. If the charge is not paid within 30 days, interest on the unpaid balance accrues from the date of receipt of the original billing.

(6) Once a determination has been made regarding the correct reimbursement amount, any overpayment made to a health care provider must be reimbursed to the insurer within 30 days of the determination. Any reimbursement amount remaining unpaid after 30 days accrues interest at 12% a year or 1% a month or a fraction of a month. Interest on the reimbursement amount remaining unpaid accrues from the date of receipt of the determination of the correct reimbursement amount.

(7) For a critical access hospital licensed pursuant to Title 50, chapter 5, the rate for services is the usual and customary charge.

(8) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(9) After mediation pursuant to department rules, an unresolved dispute between an insurer and a health care provider regarding the amount of a fee for medical services may be brought before the workers' compensation court.

(10) (a) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(b) "Visit", as used in this subsection (10), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(c) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (10)(a) if the visit is for treatment requested by an insurer.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985; amd. Sec. 25, Ch. 464, L. 1987; amd. Sec. 4, Ch. 333, L. 1989; amd. Secs. 23, 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 131, L. 1991; amd. Sec. 6, Ch. 558, L. 1991; amd. Sec. 5, Ch. 574, L. 1991; amd. Sec. 3, Ch. 628, L. 1993; amd. Sec. 1, Ch. 308, L. 1997; amd. Sec. 8, Ch. 310, L. 1997; amd. Sec. 19, Ch. 442, L. 1999; amd. Sec. 1, Ch. 138, L. 2001; amd. Sec. 3, Ch. 192, L. 2001; amd. Sec. 1, Ch. 377, L. 2003; amd. Sec. 5, Ch. 69, L. 2005; amd. Sec. 5, Ch. 345, L. 2005; amd. Sec. 3, Ch. 330, L. 2007; amd. Sec. 16, Ch. 112, L. 2009; amd. Sec. 10, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1)(a) in two places inserted "or occupational disease", inserted "including prescription drugs", before "injury" inserted "compensable", and substituted "specified in this section" for "as the nature of the injury or the process of recovery requires"; in (1)(b) at beginning inserted "Subject to the limitations in this chapter"; in (1)(d)(i), (1)(d)(ii)(B), and (6) substituted "health care provider" for "medical provider"; in (1)(f)(i) at beginning deleted "Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury" and substituted "60 months from the date of injury or diagnosis of an occupational disease" for "when they are not used for a period of 60 consecutive months" and inserted second sentence regarding reopening of benefits; inserted (1)(f)(ii) relating to inapplicability to a permanently totally disabled worker; in (2)(a) inserted second sentence relating to rate schedule for date service is provided; inserted (2)(c) relating to schedules for July 2011 through June 2013; in (2)(d) in lead-in at beginning inserted "On or after July 1, 2013" and after "medicaid services" deleted "in effect at the time the services are provided"; at end of (2)(d)(i), (2)(d)(vi), and (2)(d)(vii) inserted "as those codes exist on March 31 of each year"; in (2)(d)(ii) and (2)(d)(iv) at end inserted "as those codes and their relative weights exist on March 31 of each year"; in (2)(d)(iii) at end inserted "as those codes and their relative weights exist on October 1 of each year"; in (2)(d)(v) at end inserted "as those codes exist on October 1 of each year"; in (2)(d)(vii) substituted "in the" for "as adjusted annually using the most recently"; in (2)(e) after "additional" inserted "codes and"; inserted (2)(f) relating to rates through June 30, 2013; in (3)(a) near beginning substituted "shall" for "may", in second sentence before "utilization" inserted "adopted", and at end substituted "establish compensable medical treatment for an injured worker" for "established by the department are correct medical treatment for the injured worker"; in (3)(c) inserted first sentence concerning hiring medical director; inserted (3)(d) relating to annual review; in (9) substituted "health care provider" for "medical service provider"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

Cross-References

Catastrophically Injured Worker's Travel Assistance Act, Title 39, Ch. 71, part 40.

39-71-705. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Repealed. Sec. 68, Ch. 464, L. 1987.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915;

re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) Injured workers who suffer serious face, head, or neck disfigurement may be entitled to benefits not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) A payment under this section may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part); amd. Sec. 26, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 555, L. 1993.

39-71-709. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710. Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible under subsection (1) to receive retirement benefits and while gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

History: En. Sec. 1, Ch. 386, L. 1981; amd. Sec. 27, Ch. 464, L. 1987; amd. Sec. 14, Ch. 243, L. 1995; amd. Sec. 13, Ch. 516, L. 1995.

39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the sixth edition of the American medical association Guides to the Evaluation of Permanent Impairment;

(c) must be expressed as a percentage of the whole person; and

(d) must be established by objective medical findings and may not be based exclusively on complaints of pain.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator if the injury falls within the scope of the evaluator's practice and if the evaluator is one of the following:

(a) a physician or an osteopath licensed under Title 37, chapter 3, with admitting privileges to practice in one or more hospitals, if any, in the area where the physician or osteopath is located;

(b) a chiropractor licensed under Title 37, chapter 12;

(c) a physician assistant licensed under Title 37, chapter 20, if there is not a physician as provided for in subsection (2)(a) in the area where the physician assistant is located;

(d) a dentist licensed under Title 37, chapter 4;

(e) an advanced practice registered nurse licensed under Title 37, chapter 8; or

(f) for a claimant residing out of state or upon approval of the insurer, an evaluator referred to in subsections (2)(a) through (2)(e) who is licensed or certified in another state.

(3) If the claimant and insurer cannot agree upon the rating, the mediation procedure in Title 39, chapter 71, part 24, must be followed.

(4) Disputes over impairment ratings are subject to the provisions of 39-71-605.

History: En. Sec. 24, Ch. 464, L. 1987; amd. Sec. 2, Ch. 161, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 558, L. 1991; amd. Sec. 15, Ch. 243, L. 1995; amd. Sec. 2, Ch. 141, L. 2005; amd. Sec. 17, Ch. 112, L. 2009; amd. Sec. 11, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1)(b) substituted "sixth edition" for "current edition"; in (1)(d) at end inserted "and may not be based exclusively on complaints of pain"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-712. Temporary partial disability benefits. (1) Subject to the provisions of subsection (5), if prior to maximum healing an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Except as provided in subsection (5), a worker is not eligible for temporary partial disability benefits or temporary total disability benefits if:

(a) the worker has been released by the treating physician to return to a modified or alternative position that the individual is able and qualified to perform with the same employer;

(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an equivalent or higher wage than the worker received at the time of injury; and

(c) the worker refuses to accept the modified or alternative position. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available to the worker for any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment and if the worker continues to be temporarily totally disabled as defined in 39-71-116.

(4) Temporary partial disability may not be credited against any permanent partial disability award or settlement under 39-71-703.

(5) Unless a collective bargaining agreement precludes an injured worker from working in a modified or alternative position with a different employer or includes criteria different from those outlined in this subsection (5), an injured worker who has not reached maximum healing and who has a physical restriction may return to a modified or alternative position with a different employer at the same or a lower rate of wages as the rate paid by the employer at the time of injury if:

(a) a modified or alternative employment with the employer at the time of injury is not provided and the injured worker and that employer agree to the modified or alternative position with a different employer;

(b) a written description and all required duties of the modified or alternative position with a different employer are approved by the treating physician;

(c) both the employer at the time of injury and the injured worker agree to the type of alternative work, the alternative employer, and the terms and conditions of employment, including payment of benefits and employment taxes for the modified or alternative position with a different employer;

(d) an employee is not displaced as a result of the injured worker's placement in the modified or alternative position with a different employer; and

(e) the employer at the time of injury, the different employer, and the injured worker agree in writing to the terms and conditions, including payment of benefits, covering the injured worker for subsequent injury, unemployment insurance, employment taxes, and liability and provide a copy of the agreement to the injured employee.

(6) Any additional expenses related to the modified or alternative position, including travel, equipment, or training, must be paid by either the employer at the time of injury or the different employer and may not be charged to or deducted from the wages or benefits of the injured employee.

(7) Notwithstanding a written agreement between the employer at the time of injury and a different employer, the employer at the time of injury is the primary employer if a dispute over wages, benefits, employment taxes, workers' compensation insurance, or other terms or conditions of employment occurs.

(8) The injured worker may refuse to accept a modified or alternative position with an employer other than the employer at the time of injury without penalty. If the injured worker is offered a modified or alternative position with a different employer, the injured worker must be given written notice of the right of refusal from the employer at the time of injury and the insurer prior to beginning work with the different employer.

History: En. Sec. 6, Ch. 619, L. 1993; amd. Sec. 16, Ch. 243, L. 1995; amd. Sec. 13, Ch. 276, L. 1997; amd. Sec. 2, Ch. 121, L. 2001; amd. Sec. 1, Ch. 292, L. 2001; amd. Sec. 18, Ch. 112, L. 2009.

39-71-713. Compensation for occupational diseases and medical benefits — diminution of compensation. (1) Compensation for occupational diseases must be equal to the compensation and medical benefits provided for injuries in this chapter.

(2) When the same medical condition may be claimed as an injury and an occupational disease, compensation payable to the claimant, the claimant's beneficiaries, or the claimant's dependents may not be duplicated for the same conditions over the same time period.

History: En. Sec. 2, Ch. 416, L. 2005.

39-71-714. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease, if an autopsy is necessary to determine the cause of death, an autopsy may be requested by an insurer. The autopsy must be made under the supervision of the county coroner or a medical examiner. The expense of the autopsy must be paid by the insurer.

History: En. Sec. 3, Ch. 416, L. 2005.

39-71-715. Benefits for pneumoconiosis — definition. (1) Pneumoconiosis is an occupational disease that is compensable under this part. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

(2) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of employment.

History: En. Sec. 4, Ch. 416, L. 2005.

39-71-716. Prohibiting supplementing of benefits. A person receiving compensation or benefits under chapter 73 of this title is not entitled to compensation or benefits under this chapter.

History: En. Sec. 5, Ch. 416, L. 2005.

39-71-717. Reopening of terminated medical benefits — medical review. (1) A petition to reopen medical benefits that terminate under 39-71-704(1)(f) must be reviewed as provided in this section.

(2) Medical benefits may be reopened only if the worker's medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work. Medical benefits closed by settlement or court order are not subject to reopening.

(3) A review of a petition to reopen medical benefits must be conducted by a medical review panel as provided in subsection (4) or, if stipulated by the worker and the insurer, solely by the department's medical director.

(4) The medical review panel must be composed of the department's medical director and two additional physicians who are licensed to practice medicine in Montana and who have expertise and experience in the area of medicine that is relevant to the worker's condition. The department's medical director shall serve as the presiding officer of the medical review panel. Participants on the medical review panel must be reimbursed as provided in 2-18-501 through 2-18-503 if travel is required for a review and must be paid a reasonable fee for services.

(5) A petition for reopening of medical benefits must be filed with the department within 5 years of the termination of medical benefits pursuant to 39-71-704(1)(f). A petition may not be filed more than 90 days before benefits are to terminate.

(6) Upon receipt of a petition to reopen medical benefits, the department shall request from the insurer a copy of the worker's medical records contained in the insurer's claim file. The worker or the insurer may submit additional information that is relevant to the petition to reopen medical benefits.

(7) The proof necessary to support reopening of medical benefits must be a preponderance of the evidence.

(8) Within 60 days of the submission of a petition to reopen medical benefits, the medical review panel or the department's medical director shall issue a report. The report must provide the rationale for the decision reached. A report issued by the medical review panel must be supported by a majority of the panel members. If the report concludes that medical benefits must be reopened, the report must state the extent to which the benefits must be reopened consistent with the utilization and treatment guidelines. Benefits reopened pursuant to this section remain open for 2 years or until maximum medical improvement is achieved following surgery or the recommended medical treatment, whichever occurs first. If the medical panel specifically approves treatment beyond 2 years, medical benefits remain open for as long as recommended by the medical panel. The petitioner and the insurer shall submit updated information to the medical panel every 2 years, and every subsequent 2 years the medical panel shall review the claims that were reopened for longer than 2 years to determine whether to change the previous recommendation.

(9) A party aggrieved by a decision of the department's medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers' compensation court. The report of the department's medical director or the medical review panel is presumed to be correct and may be overcome only by clear and convincing evidence.

History: En. Sec. 29, Ch. 167, L. 2011.

Compiler's Comments

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-718 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of the death, the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover the payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(4)(a) through (4)(d), weekly compensation benefits for an injury causing death are 66 ⅔% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of death.

(3) To beneficiaries as defined in 39-71-116(4)(e) and (4)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of the beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(4)(b) through (4)(d).

(6) In all cases, benefits must be paid to beneficiaries.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979; amd. Sec. 29, Ch. 464, L. 1987; amd. Sec. 8, Ch. 9, Sp. L. June 1989; amd. Sec. 6, Ch. 480, L. 1991; amd. Sec. 17, Ch. 243, L. 1995; amd. Sec. 14, Ch. 516, L. 1995; amd. Sec. 9, Ch. 310, L. 1997; amd. Sec. 2, Ch. 36, L. 2011; amd. Sec. 12, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 36 in (1)(b) at end substituted "39-71-741(5)" for "39-71-741(3)". Amendment effective March 23, 2011.

Chapter 167 in (1)(b) at end substituted "39-71-741(5)" for "39-71-741(3)". Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

39-71-723. How compensation to be divided among beneficiaries. Compensation that is due to beneficiaries must be paid to the surviving spouse, if any, or if none, divided equally among or for the benefit of the children. In cases in which beneficiaries are a surviving spouse and stepchildren of the spouse, the compensation must be divided equally among all beneficiaries. Compensation that is due to beneficiaries, as defined in 39-71-116(4)(e) and (4)(f), if there is more than one, must be divided equitably among them.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 480, L. 1991; amd. Sec. 18, Ch. 243, L. 1995; amd. Sec. 15, Ch. 516, L. 1995; amd. Sec. 7, Ch. 172, L. 1997.

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary who is not residing within the United States, satisfactory proof of the relationship as to constitute a beneficiary under this chapter must be furnished by the beneficiary, authenticated under seal of an officer of a court of law in the country where the beneficiary resides. The proof is conclusive as to the identity of the beneficiary, and any other claim of any other person to any compensation is barred from and after the filing of the proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary, consul, or consular agent within the United States representing the country in which the nonresident beneficiary resides, and the written receipt of the plenipotentiary, consul, or consular agent acquits the employer or the insurer.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 172, L. 1997.

39-71-725. Payment of burial expense. There must be paid, in case of the death of an employee whose death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $4,000. The payment is not a part of the compensation that might be paid but is a benefit in addition to and separate from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981; amd. Sec. 14, Ch. 377, L. 1999.

39-71-726. No compensation after death when death not result of injury. If the employee dies from some cause other than the injury, there is no liability for compensation after the death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2); amd. Sec. 1548, Ch. 56, L. 2009.

39-71-727. Payment for prescription drugs — limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may bill the insurer only for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) The department shall establish a schedule of fees for prescription drugs.

(6) Except as provided in subsection (8), a pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, the terms "brand name" and "generic name" have the meanings provided in 37-7-502.

(8) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy. However, an insurer may authorize up to a 90-day supply of medications from an in-state mail service pharmacy.

(9) The provisions of this section do not apply to an agreement between a preferred provider organization and an insurer.

History: En. Sec. 2, Ch. 131, L. 1991; amd. Sec. 4, Ch. 628, L. 1993; amd. Sec. 19, Ch. 243, L. 1995; amd. Sec. 7, Ch. 117, L. 2007; amd. Sec. 19, Ch. 112, L. 2009.

39-71-728 through 39-71-735 reserved.

39-71-736. Compensation — from what dates paid. (1) (a) Except as provided in subsection (1)(c), compensation may not be paid for the first 32 hours or 4 days' loss of wages, whichever is less, that the worker is totally disabled and unable to work because of an injury. A worker is eligible for compensation starting with the 5th day.

(b) Separate benefits of medical and hospital services must be furnished from the date of injury.

(c) If the worker is totally disabled and unable to work in any capacity for 21 days or longer, compensation must be paid retroactively to the first day of total wage loss unless the worker waives the payment as provided in subsection (2)(b)(ii).

(2) (a) For the purpose of this section, except as provided in subsection (3), a worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 4-day waiting period.

(b) A worker who is entitled to receive retroactive compensation benefits pursuant to subsection (1)(c) but who took sick leave as provided in subsection (2)(a) may elect to either:

(i) repay the employer the amount of salary for the sick leave received; or

(ii) waive the retroactive payment of benefits attributable to any days or hours for which the worker received sick leave.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by a worker may not affect the worker's eligibility for temporary total disability benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979; amd. Sec. 30, Ch. 464, L. 1987; amd. Sec. 6, Ch. 333, L. 1989; amd. Sec. 18, Ch. 619, L. 1993; amd. Sec. 1, Ch. 274, L. 2001; amd. Sec. 1, Ch. 486, L. 2003; amd. Sec. 13, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1)(a) at beginning inserted exception clause and in two places substituted "worker" for "claimant"; inserted (1)(c) relating to payment of compensation retroactively; in (2)(a) after "subsection (3)" substituted "a worker" for "an injured worker"; inserted (2)(b) relating to election to receive retroactive compensation; in (4) substituted "a worker" for "an injured worker"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-737. Compensation to run consecutively — exceptions. Compensation must run consecutively and not concurrently, and payment may not be made for two classes of disability over the same period, except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985; amd. Sec. 31, Ch. 464, L. 1987; amd. Sec. 16, Ch. 516, L. 1995.

39-71-738. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Settlements and lump-sum payments — legislative intent. (1) By written agreement, a claimant and an insurer may convert benefits under this chapter in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval as provided in subsection (2). Lump-sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (2)(c), are not subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved.

(2) The department shall directly notify a claimant of a department order approving or disapproving a claimant's settlement or lump-sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve a settlement agreement to convert the following benefits to a lump sum only under the following conditions:

(a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability;

(b) permanent partial disability benefits if an insurer has accepted initial liability for an injury. The total of any lump-sum payment in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (2)(b) only if the department determines that the lump-sum payment amount is inadequate.

(c) permanent total disability benefits if the total of all lump-sum payments in part that are awarded to a claimant do not exceed $20,000. The approval or award of a lump-sum permanent total disability payment in whole or in part by the department or court is the exception. It may be given only if the worker has demonstrated financial need that:

(i) relates to:

(A) the necessities of life;

(B) an accumulation of debt incurred prior to the injury; or

(C) a self-employment venture that is considered feasible under criteria set forth by the department; or

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) except as otherwise provided in this chapter, all other settlements and lump-sum payments agreed to by a claimant and insurer;

(e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability; or

(f) medical benefits on an accepted claim if the claimant has reached maximum medical improvement and the following applicable conditions are met:

(i) the insurer and claimant mutually agree to a settlement of all or a portion of medical benefits; and

(ii) a settlement is in the best interest of the parties to the settlement.

(3) The parties to a medical settlement agreement shall set out the rationale that is the basis for the settlement under subsection (2)(f), and the claimant shall indicate by a signed acknowledgment an understanding of what medical benefits will terminate because of the settlement.

(4) Any lump-sum conversion of benefits under this section must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum advance amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination.

(7) If an insurer and a claimant agree to a settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision without requesting mediation.

(8) The legislature does not intend to allow settlement of undisputed medical claims under subsection (2)(f) unless all parties willingly agree to the settlement. The failure of the parties to willingly agree to a settlement does not constitute a dispute concerning benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985; amd. Sec. 32, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 574, L. 1991; amd. Sec. 20, Ch. 243, L. 1995; amd. Sec. 10, Ch. 310, L. 1997; amd. Sec. 9, Ch. 103, L. 2005; amd. Sec. 3, Ch. 36, L. 2011; amd. Sec. 14, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 36 in (1) in first sentence inserted "a claimant and an insurer may convert", after "this chapter" deleted "may be converted", at end of second sentence inserted "as provided in subsection (2)"; in (2) in first sentence substituted "settlement" for "compromise" and in third sentence substituted "a settlement agreement" for "an agreement"; in (2)(b) in second sentence substituted "lump-sum payment" for "permanent partial lump-sum conversion" and in third sentence substituted "payment amount" for "conversion amount"; in (2)(d) after "all other" deleted "compromise"; inserted (2)(f) regarding medical benefits; inserted (3) regarding parties to medical settlement agreement; in (7) after "agree to a" deleted "compromise and release" and at end inserted "without requesting mediation"; inserted (8) regarding settlement of undisputed medical claims; and made minor changes in style. Amendment effective March 23, 2011.

Chapter 167 in (1) near beginning inserted "a claimant and an insurer may convert", after "this chapter" deleted "may be converted", at end of second sentence inserted "as provided in subsection (2)"; in (2) in first sentence substituted "settlement" for "compromise" and in last sentence inserted "settlement" before "agreement"; in (2)(b) in second sentence near beginning substituted "lump-sum payment" for "permanent partial lump-sum conversion" and near end of last sentence after "lump-sum" deleted "conversion"; in (2)(c) in first sentence substituted "payments" for "conversions"; in (2)(d) after "all other" deleted "compromise"; inserted (2)(f) relating to medical benefits upon reaching maximum medical improvement; inserted (3) relating to provisions of a medical settlement agreement; in (5)(a) substituted "advance" for "payment"; in (7) after "agree to a" deleted "compromise and release" and at end inserted "without requesting mediation"; inserted (8) relating to legislative intent on certain settlements; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 5, Ch. 36, L. 2011, provided: "[Section 3] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled by [the effective date of this act]." Effective March 23, 2011.

Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-742. Who may receive payment. (1) A payment due to a child under 18 years of age or to a person adjudged incompetent must be made to the parent or the appointed guardian, and the written receipt for the payment must acquit the employer, the insurer, or the department of further liability.

(2) A payment due to a member of the highway patrol receiving the salary benefit provided in 44-1-511 must be made to the department of justice to offset the salary benefit until the member is no longer eligible to receive the salary benefit.

(3) In other cases, payment must be made to the person entitled to the payment or to the person's authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 12, L. 2007.

39-71-743. Assignment or attachment of payments. (1) Payments under this chapter are not assignable, subject to attachment or garnishment, or held liable in any way for debts, except:

(a) as provided in 71-3-1118;

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law;

(c) as provided in 53-2-612 or 53-2-613 for medical benefits paid pursuant to this chapter;

(d) as provided in 39-71-742; or

(e) for workers' compensation benefits payable to an injured worker to pay restitution to an insurer whenever the injured worker is subject to court-ordered restitution for theft of workers' compensation benefits. The insurer shall notify the injured worker in writing of the withholding of any court-ordered restitution from the injured worker's benefits.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of public health and human services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is necessary to pay current child support and a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(10), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983; amd. Sec. 1, Ch. 485, L. 1987; amd. Sec. 19, Ch. 702, L. 1989; amd. Sec. 14, Ch. 628, L. 1993; amd. Sec. 2, Ch. 424, L. 1995; amd. Sec. 104, Ch. 546, L. 1995; amd. Sec. 1, Ch. 31, L. 2005; amd. Sec. 10, Ch. 103, L. 2005; amd. Sec. 26, Ch. 416, L. 2005; amd. Sec. 2, Ch. 12, L. 2007; amd. Sec. 2, Ch. 330, L. 2007; amd. Sec. 20, Ch. 112, L. 2009.

Cross-References

Property exempt from execution without limitation — exceptions, 25-13-608.

Exempt property — bankruptcy proceeding, 31-2-106.

39-71-744. Benefits not due while claimant is incarcerated — exceptions. (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated for a period exceeding 30 days in a correctional institution or jail as the result of conviction of a felony or a misdemeanor. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(e).

History: En. Sec. 28, Ch. 464, L. 1987; amd. Sec. 1, Ch. 457, L. 1993; amd. Sec. 21, Ch. 243, L. 1995; amd. Sec. 31, Ch. 308, L. 1995; amd. Sec. 105, Ch. 546, L. 1995.

Part 8
Compensation for Occupational Deafness
(Repealed)

39-71-801. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

39-71-802. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

39-71-803. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8); amd. Sec. 33, Ch. 464, L. 1987.

39-71-804. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

39-71-805. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f); amd. Sec. 11, Ch. 214, L. 2001.

39-71-806. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

39-71-807. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

39-71-808. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

39-71-809. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

39-71-810. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

39-71-811. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

39-71-812. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

39-71-813. Repealed. Sec. 10, Ch. 26, L. 2005.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

Part Cross-References

Definitions, 39-71-116, 39-71-901.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is a person with a disability.

(2) "Fund" means the subsequent injury fund in the proprietary fund category.

(3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the person should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979; amd. Sec. 24, Ch. 613, L. 1989; amd. Sec. 40, Ch. 472, L. 1997; amd. Sec. 19, Ch. 389, L. 1999; amd. Sec. 7, Ch. 193, L. 2003.

39-71-902. Repealed. Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 555, L. 1993; amd. Sec. 17, Ch. 516, L. 1995.

39-71-903. Procedure. When a person with a disability receives an injury, as defined in 39-71-119, the procedure provided in this chapter applies to all proceedings under this part, except when specifically otherwise provided.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979; amd. Sec. 4, Ch. 284, L. 1997; amd. Sec. 41, Ch. 472, L. 1997.

39-71-904. Rules for certification. The department shall promulgate rules for certification of persons with disabilities.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 42, Ch. 472, L. 1997.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-71-905. Certification as person with disability — eligibility for benefits under fund. (1) A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before an injury occurs that is covered by this part. The certification is effective retroactively to the date the department received the application.

(2) If a claimant has met the provisions of subsection (1) and a subsequent claim has been accepted by an insurer, the claim is eligible for the benefits under the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979; amd. Sec. 1, Ch. 151, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 558, L. 1991; amd. Sec. 43, Ch. 472, L. 1997; amd. Sec. 15, Ch. 377, L. 1999; amd. Sec. 1, Ch. 257, L. 2005; amd. Sec. 21, Ch. 112, L. 2009.

39-71-906. Repealed. Sec. 2, Ch. 257, L. 2005.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 44, Ch. 472, L. 1997; amd. Sec. 12, Ch. 214, L. 2001.

39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited. (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979; amd. Sec. 1, Ch. 213, L. 1987; amd. Sec. 9, Ch. 555, L. 1993; amd. Sec. 5, Ch. 284, L. 1997; amd. Sec. 45, Ch. 472, L. 1997; amd. Sec. 20, Ch. 389, L. 1999; amd. Sec. 7, Ch. 48, L. 2007.

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979; amd. Sec. 25, Ch. 613, L. 1989.

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the insurer shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7); amd. Sec. 2, Ch. 213, L. 1987.

39-71-910. Repealed. Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979; amd. Secs. 26, 64, Ch. 613, L. 1989.

39-71-911. Obligation to make payments on behalf of fund not independent liability. Except as provided in 39-71-909 and 39-71-920, the obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 27, Ch. 613, L. 1989; amd. Sec. 8, Ch. 193, L. 2003.

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-913. Repealed. Sec. 7, Ch. 284, L. 1997.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 28, Ch. 613, L. 1989.

39-71-914. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than $1 million for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year.

History: En. Sec. 1, Ch. 284, L. 1997; amd. Sec. 16, Ch. 377, L. 1999; amd. Sec. 13, Ch. 214, L. 2001; amd. Sec. 9, Ch. 193, L. 2003; amd. Sec. 6, Ch. 69, L. 2005; amd. Sec. 27, Ch. 416, L. 2005; amd. Sec. 8, Ch. 48, L. 2007; amd. Sec. 22, Ch. 112, L. 2009.

39-71-916. Reimbursement of subsequent injury fund — effect on claims experience rating. An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

History: En. Sec. 2, Ch. 48, L. 2007.

39-71-917 through 39-71-919 reserved.

39-71-920. Concurrence of fund in settlements. (1) Petitions for compromise settlements that potentially involve payments from the fund must have written concurrence by an authorized representative of the fund prior to submission for department approval.

(2) The failure to receive written concurrence from the fund's representative relieves the fund of any liability for payment of benefits for a compromise settlement, and the obligation to pay remains with the insurer.

History: En. Sec. 10, Ch. 193, L. 2003.

Part 10
Stay-at-Work/Return-to-Work Assistance

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-1001. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Payment for vocational rehabilitation expenses for injuries occurring on or before June 30, 1997. For injuries occurring on or before June 30, 1997, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985; amd. Sec. 35, Ch. 464, L. 1987; amd. Sec. 7, Ch. 574, L. 1991; amd. Sec. 106, Ch. 546, L. 1995; amd. Sec. 1, Ch. 122, L. 1997.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding calendar year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding calendar year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding calendar year.

(2) Separate accounts of the amounts that were collected and disbursements that were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) The board of investments shall invest the money of the industrial accident rehabilitation account, and the investment income must be deposited in the industrial accident rehabilitation account.

(5) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

(6) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 107, Ch. 546, L. 1995; amd. Sec. 2, Ch. 122, L. 1997; amd. Sec. 17, Ch. 377, L. 1999; amd. Sec. 11, Ch. 193, L. 2003.

39-71-1005. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 123, L. 1979.

39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

(a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or

(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A disabled worker is entitled to receive biweekly rehabilitation benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Rehabilitation benefits payable pursuant to a retraining rehabilitation plan under this section are not payable in a lump sum. Rehabilitation benefits may be paid in a lump sum for job placement services.

(3) In addition to rehabilitation benefits payable under subsection (2), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

(4) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(5) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

(6) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. Sec. 10, Ch. 574, L. 1991; amd. Sec. 7, Ch. 296, L. 1993; amd. Sec. 24, Ch. 243, L. 1995; amd. Sec. 111, Ch. 546, L. 1995; Sec. 39-71-2001, MCA 1993; redes. 39-71-1006 by Code Commissioner, 1995; amd. Sec. 3, Ch. 122, L. 1997; amd. Sec. 14, Ch. 276, L. 1997; amd. Sec. 11, Ch. 103, L. 2005.

39-71-1007 through 39-71-1010 reserved.

39-71-1011. Definitions. As used in this part, the following definitions apply:

(1) "Assistance fund" means the stay-at-work/return-to-work assistance fund provided for in 39-71-1049.

(2) "Commission on rehabilitation counselor certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation providers.

(3) "Disabled worker" means a worker who has a permanent impairment, established by objective medical findings, resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury or to a job with similar physical requirements and who has an actual wage loss as a result of the injury.

(4) "Insurer's stay-at-work/return-to-work assistance policy" or "assistance policy" means a written stay-at-work/return-to-work policy that explains to the worker the process of evaluation, planning, implementation, and provision of services by the insurer prior to the determination that the worker meets the definition of a disabled worker. The services are intended to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan.

(5) "Rehabilitation benefits" means benefits provided in 39-71-1006 and 39-71-1025.

(6) "Rehabilitation plan" means a written individualized plan that assists a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification and that reasonably reduces the worker's actual wage loss.

(7) "Rehabilitation provider" means a rehabilitation counselor certified by the commission on rehabilitation counselor certification and designated by the insurer.

(8) "Rehabilitation services" means a program of evaluation, planning, and implementation of a rehabilitation plan to assist a disabled worker to return to work.

(9) "Stay-at-work/return-to-work assistance" or "assistance" means the evaluation, planning, implementation, and provision of appropriate services prior to the determination that the worker meets the definition of a disabled worker that are designed to facilitate a worker's return to work as soon as possible following the worker's injury or occupational disease. This assistance may include a rehabilitation plan.

History: En. Sec. 34, Ch. 464, L. 1987; amd. Sec. 2, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 574, L. 1991; amd. Sec. 22, Ch. 243, L. 1995; amd. Sec. 108, Ch. 546, L. 1995; amd. Sec. 4, Ch. 122, L. 1997; amd. Sec. 49, Ch. 130, L. 2005; amd. Sec. 15, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in lead-in substituted "part" for "chapter"; inserted definition of assistance fund; at end of definition of commission on rehabilitation counselor certification substituted "providers" for "practitioners"; inserted definition of insurer's stay-at-work/return-to-work assistance policy; inserted definition of stay-at-work/return-to-work assistance; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1012. Repealed. Sec. 14, Ch. 574, L. 1991.
History: En. Sec. 36, Ch. 464, L. 1987.

39-71-1013. Repealed. Sec. 8, Ch. 122, L. 1997; Sec. 13, Ch. 310, L. 1997.
History: En. Sec. 43, Ch. 464, L. 1987; amd. Sec. 9, Ch. 574, L. 1991.

39-71-1014. Rehabilitation services — required and provided by insurers. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider; or

(b) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered through a rehabilitation counselor certified by the commission on rehabilitation counselor certification.

History: En. Sec. 37, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 109, Ch. 546, L. 1995; amd. Sec. 5, Ch. 122, L. 1997; amd. Sec. 50, Ch. 130, L. 2005.

39-71-1015. Repealed. Sec. 14, Ch. 574, L. 1991.
History: En. Sec. 38, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1016. Repealed. Sec. 14, Ch. 574, L. 1991.
History: En. Sec. 39, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1017. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 40, Ch. 464, L. 1987; amd. Sec. 9, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1018. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 41, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1019. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 42, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 40, Ch. 16, L. 1991.

39-71-1020 through 39-71-1022 reserved.

39-71-1023. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 44, Ch. 464, L. 1987; amd. Sec. 3, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1024. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 45, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 9, Sp. L. June 1989.

39-71-1025. Auxiliary benefits. (1) In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000, adjusted as provided in subsection (2), may be paid by the insurer for specialized job modification, reasonable travel, and relocation expenses used for any of the following:

(a) search for new employment;

(b) return to work but in a new location;

(c) the implementation of a rehabilitation plan that has been filed with the department; or

(d) attendance at an on-the-job training program.

(2) The separate benefit may be adjusted by an amount that is the percentage increase, if any, in the current state's average weekly wage over the state's average weekly wage adopted for the previous year.

History: En. Sec. 46, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 574, L. 1991; amd. Sec. 22, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) in lead-in after "$4,000" inserted "adjusted as provided in subsection (2)", inserted "specialized job modification", and at end substituted "for any of the following" for "to"; inserted (2) relating to adjustment of the separate benefit; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1026. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 47, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1027 through 39-71-1030 reserved.

39-71-1031. Exchange of information. The insurer, the rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part.

History: En. Sec. 48, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 110, Ch. 546, L. 1995; amd. Sec. 6, Ch. 122, L. 1997; amd. Sec. 23, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 substituted "insurer, the" for "insurer's designated"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — appeal. (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' written notice to the worker and the department, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

(2) If the worker disputes the termination of benefits, the worker may, after mediation pursuant to department rule, petition the workers' compensation court for resolution of the dispute.

History: En. Sec. 49, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 574, L. 1991; amd. Sec. 23, Ch. 243, L. 1995; amd. Sec. 7, Ch. 122, L. 1997; amd. Sec. 20, Ch. 442, L. 1999.

39-71-1033. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 50, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1034 and 39-71-1035 reserved.

39-71-1036. Medical status form. (1) The department shall create a medical status form to be provided to a health care provider providing treatment for a compensable injury or occupational disease.

(2) The form must contain, at a minimum, the following information:

(a) the worker's first and last names and claim number;

(b) the diagnosed condition that is a direct result of the compensable injury or occupational disease;

(c) the treatment plan for the worker;

(d) identification of any medications prescribed for treatment of the worker;

(e) the timeframe during which the treating physician recommends that the worker be completely off work;

(f) the date or anticipated date of the worker's release to modified duty;

(g) the date or anticipated date of the worker's release to full duty;

(h) any temporary work restrictions applicable to the worker;

(i) any permanent work restrictions applicable to the worker;

(j) the anticipated date of maximum medical improvement; and

(k) the date of the worker's next appointment.

(3) An insurer may request additional information from the health care provider not contained in the department's form.

(4) The treating physician or a designee shall complete the form following every office visit with the worker.

History: En. Sec. 28, Ch. 167, L. 2011.

Compiler's Comments

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1037 through 39-71-1040 reserved.

39-71-1041. Stay-at-work/return-to-work goals and options — notification by department — agreement between worker and insurer. (1) The goal of stay-at-work/return-to-work assistance is to minimize avoidable disruption caused by a work-related injury or occupational disease by assisting the worker in the worker's return to the same position with the same employer or to a modified position with the same employer as soon as possible after an injury or an occupational disease occurs.

(2) To further the goal in subsection (1), the department shall, upon receipt from the insurer of a report of injury or occupational disease pursuant to 39-71-307(2), distribute to the worker a

document that describes the stay-at-work/return-to-work assistance that is available upon request by the worker.

(3) Services provided as part of stay-at-work/return-to-work assistance are provided in addition to or prior to rehabilitation services and are intended to help a worker return to work.

History: **En. Sec. 16, Ch. 167, L. 2011.**

Compiler's Comments

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1042. Request for and delivery of stay-at-work/return-to-work assistance. (1) (a) A worker who is claiming an injury or occupational disease, an employer, or a medical provider may ask that the department furnish stay-at-work/return-to-work assistance. After the worker signs a claim for benefits, the department shall promptly attempt to determine which insurer is at risk for the injury or occupational disease and contact that insurer. The department shall advise the insurer of the request for stay-at-work/return-to-work assistance and shall coordinate the assistance with the insurer.

(b) If an insurer has accepted liability for the claim, the insurer shall provide stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services. The insurer is directly liable for paying for the stay-at-work/return-to-work assistance furnished.

(c) If an insurer at risk has not accepted liability for the claim, the insurer may choose one of the following actions:

(i) The insurer at risk for the claim may initiate stay-at-work/return-to-work assistance either in accordance with the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services and shall notify the department within 3 business days of being contacted by the department that the insurer is acting under this subsection (1)(c)(i). If the insurer provides either type of assistance, the insurer becomes responsible for directly paying for the assistance. Payment of assistance pursuant to this subsection (1)(c)(i) does not constitute admission of liability or a waiver of any right of defense.

(ii) If the insurer at risk for the claim does not notify the department within 3 business days of being contacted by the department that the insurer will provide assistance, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(d) If the department cannot promptly determine which insurer is at risk for coverage, the department shall obtain stay-at-work/return-to-work assistance for the worker by designating a rehabilitation provider.

(e) A rehabilitation provider designated by the department under this section shall bill the department for services provided. The department shall pay for the stay-at-work/return-to-work assistance out of the assistance fund until the maximum allowed amount of assistance is provided or until the insurer denies the claim and notifies the department of the denial.

(f) If an insurer is providing assistance pursuant to the insurer's stay-at-work/return-to-work assistance policy, the insurer shall provide in writing to a worker, with a copy to the department, an explanation of the stay-at-work/return-to-work assistance being provided to the worker under this section and shall include contact information for the person providing the assistance.

(2) Rather than make a request to the department, a worker, an employer, or a medical provider may directly ask the insurer to provide stay-at-work/return-to-work assistance.

(3) In the absence of a request by a worker, an employer, or a medical provider, an insurer may initiate and provide stay-at-work/return-to-work assistance by providing the worker with a copy of the insurer's stay-at-work/return-to-work assistance policy or by designating a rehabilitation provider to provide rehabilitation services.

(4) Stay-at-work/return-to-work assistance requested under this section is available as a service apart from a determination regarding indemnity benefits. A worker or an employer may decline to accept stay-at-work/return-to-work assistance. The failure of a worker to voluntarily agree to assistance is not a dispute concerning benefits. However, if the assistance provided under this part results in a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury and the worker refuses the offer, the workers' indemnity benefits may end as provided in 39-71-701 and 39-71-712.

(5) Stay-at-work/return-to-work assistance is available at any time unless:

(a) the worker, prior to a determination that the worker meets the definition of a disabled worker, has refused a job offer for a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(b) the worker has actually returned to work; or

(c) the claim has been closed pursuant to 39-71-704(1)(f)(i) or indemnity benefits have been settled pursuant to the definition of a settled claim in 39-71-107.

(6) If the insurer determines that the worker has not suffered a compensable injury or occupational disease and denies liability for the claim, the insurer or the department shall terminate any stay-at-work/return-to-work assistance that was initiated before the insurer's denial of liability.

History: En. Sec. 17, Ch. 167, L. 2011.

Compiler's Comments

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1043. Rehabilitation provider — evaluation. (1) Stay-at-work/return-to-work assistance must be provided by a rehabilitation provider pursuant to this section if:

(a) the department provides assistance; or

(b) an insurer elects to designate a rehabilitation provider instead of using the insurer's own stay-at-work/return-to-work assistance policy.

(2) (a) The rehabilitation provider shall evaluate and determine the stay-at-work/return-to-work capabilities of the worker pursuant to the stay-at-work/return-to-work goals listed in 39-71-1041.

(b) If the worker has returned to work, the rehabilitation provider shall provide documentation of the assistance to the worker, the insurer, and the department.

(c) If the worker has not returned to work and has not received a job offer to return to work, the rehabilitation provider shall document the reasons the stay-at-work/return-to- work assistance was unsuccessful. The documentation must be provided to the worker, the insurer, the treating physician, and the department.

(d) The following conditions allow termination of assistance prior to the time a worker meets the definition of a disabled worker:

(i) the worker has returned to work earning wages that are at least as much as at the time of injury;

(ii) the worker has received an offer to return to work at a position that is within the worker's physical abilities, for which the worker is qualified, and for which the wages are at least equal to the worker's wages at the time of injury;

(iii) the worker has returned to work in an alternative position that pays less than the worker's wages at the time of injury and that qualifies the worker for temporary partial disability benefits pursuant to 39-71-712; or

(iv) the worker receives a job offer to return to work in a position that is within the worker's physical abilities, for which the worker is qualified, for which the wages are less than the worker's wages at the time of injury, and that qualifies the worker for temporary partial disability benefits under 39-71-712.

(e) If a worker has requested stay-at-work/return-to-work assistance and a rehabilitation plan has been agreed to by the worker and the insurer, the plan continues until completed.

(3) If the worker or insurer disputes the availability or level of assistance, the worker or insurer may, after mediation, petition the workers' compensation court for resolution of the dispute.

History: En. Sec. 18, Ch. 167, L. 2011.

Compiler's Comments

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1044 through 39-71-1048 reserved.

39-71-1049. Stay-at-work/return-to-work assistance fund — purpose — payment process — rulemaking. (1) There is a stay-at-work/return-to-work assistance fund in the proprietary fund category.

(2) The purpose of the assistance fund is to pay for stay-at-work/return-to-work assistance provided by the department so that assistance may be provided as early as practicable in the workers' compensation claims process.

(3) (a) The department may establish by rule:

(i) the amounts and types of assistance to be provided; and

(ii) the maximum hourly rate that may be charged for stay-at-work/return-to-work assistance obtained by the department and paid for by the assistance fund.

(b) The rules adopted under subsection (3)(a) regarding the payment amounts to rehabilitation providers do not apply if the insurer has taken direct responsibility for providing stay-at-work/return-to-work assistance.

(c) If rules are not adopted to implement subsection (3)(a), the department may not provide more than $2,000 in assistance.

History: En. Sec. 19, Ch. 167, L. 2011.

Compiler's Comments

Transition: Section 30(1), Ch. 167, L. 2011, provided: "The department of labor and industry shall transfer $100,000 from the administration fund provided for by 39-71-201 to the stay-at-work/return-to-work assistance fund established in [section 19] [39-71-1049] to provide the initial funding for the fund."

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1050. Assessment for stay-at-work/return-to-work assistance fund — definition. (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).

(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.

(2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.

(3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.

(5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).

(6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

(7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-work assistance fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.

(8) (a) The department shall deposit all assessments due under this section into the assistance fund.

(b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.

(d) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance fund.

(9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator for the following year's assessment premium surcharge as provided in subsection (5).

(10) If the total assessment is less than $100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.

(11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work assistance from the assistance fund.

History: En. Sec. 20, Ch. 167, L. 2011.

Compiler's Comments

Transition: Section 30(2), Ch. 167, L. 2011, provided: "Effective for policies written or renewed in state fiscal year 2012 only, the premium surcharge rate to be levied by insurers on workers' compensation insurance premiums pursuant to [section 20] [39-71-1050] is 0.00082."

Effective Date: Section 34, Ch. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1051. Rulemaking authority. The department may adopt rules to implement this part.

History: En. Sec. 21, Ch. 167, L. 2011.

Compiler's Comments

Effective Date: Section 34, L. 167, L. 2011, provided: "[This act] is effective on passage and approval."

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

Part 11

Treatment by Designated Providers

39-71-1101. Choice of health care provider by worker — insurer designation or approval of treating physician or referral to managed care or preferred provider organization — payment terms — definition. (1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

(2) Any time after acceptance of liability by an insurer, the insurer may designate or approve a treating physician who agrees to assume the responsibilities of the treating physician. The designated or approved treating physician:

(a) is responsible for coordinating the worker's receipt of medical services as provided in 39-71-704;

(b) shall provide timely determinations required under this chapter, including but not limited to maximum medical healing, physical restrictions, return to work, and approval of job analyses, and shall provide documentation;

(c) shall provide or arrange for treatment within the utilization and treatment guidelines or obtain prior approval for other treatment; and

(d) shall conduct or arrange for timely impairment ratings.

(3) The treating physician may refer the worker to other health care providers for medical services, as provided in 39-71-704, for the treatment of a worker's compensable injury or occupational disease. A health care provider to whom the worker is referred by the designated treating physician is not responsible for coordinating care or providing determinations as required of the treating physician.

(4) The treating physician designated or approved by the insurer must be reimbursed at 110% of the department's fee schedule.

(5) A health care provider to whom the worker is referred by the treating physician must be reimbursed at 90% of the department's fee schedule.

(6) A health care provider providing health care on a compensable claim prior to the designation or approval of the treating physician by the insurer must be reimbursed at 100% of the department's fee schedule.

(7) Regardless of the date of injury, the medical fee schedule rates in effect as adopted by the department in 39-71-704 and the percentages referenced in subsections (4) through (6) of this section apply to the medical service on the date on which the medical service was provided.

(8) The insurer may direct the worker to a managed care organization or a preferred provider organization for designation of the treating physician.

(9) After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer.

(10) After the date that a worker [whose injury is] subject to the provisions of subsection (9) receives individual written notice of a referral, the worker must, unless otherwise authorized by the insurer, receive medical services from the organization designated by the insurer, in accordance with 39-71-1102 and 39-71-1104. The designated treating physician in the organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a health care provider who is not a member of a managed care organization or a preferred provider organization.

(11) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date of injury or occupational disease.

History: En. Sec. 5, Ch. 628, L. 1993; amd. Sec. 1, Ch. 468, L. 1999; amd. Sec. 24, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) substituted current language for "Subject to subsection (3), a worker may choose the initial treating physician within the state of Montana"; inserted (2) allowing an insurer to designate or approve a treating physician; inserted (3) relating to referral to another health care worker; inserted (4) relating to 110% reimbursement; inserted (5) relating to 90% reimbursement; inserted (6) relating to 100% reimbursement; inserted (7) relating to rate on date service was provided; in (8) at beginning deleted "Authorization by the insurer is required to change treating physicians. If authorization is not granted", near beginning substituted "may" for "shall", and near middle substituted "or a preferred provider organization for designation of the treating physician" for "if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's treating physician"; in (9) at beginning substituted "After the insurer directs a worker to a managed care organization or preferred provider organization, a health care provider" for "A medical service provider" and at end deleted "if"; deleted (9)(a) through (9)(d) that read: "(a) the injury results in a total loss of wages for any duration;

(b) the injury will result in permanent impairment;

(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or

(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required"; in (10) in first sentence after "notice of a referral" deleted "to a managed care organization", before "organization designated" deleted "managed care", and inserted reference to 39-71-1102, in second sentence after "treating physician in the" deleted "managed care", and in last sentence substituted "health care provider" for "medical service provider" and at end inserted "or a preferred provider organization"; in (11) at end substituted "the date of injury or occupational disease" for "the date that the injury meets the provisions of subsection (3). The notice must advise the worker of the worker's right to choose the initial treating physician under subsection (1)"; deleted former (6) that read: "(6) Any postings or other information regarding referral to a managed care organization on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to a managed care organization, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection (1)"; and made minor changes in style. Amendment effective April 12, 2011.

Code Commissioner Correction: The Code Commissioner inserted brackets around apparently erroneous language in (10) that refers to language that was deleted by the amendment of this section.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1102. Preferred provider organizations — establishment — limitations. (1) In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and health care providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that an injured worker is given an individual written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers.

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury.

History: En. Sec. 6, Ch. 628, L. 1993; amd. Sec. 2, Ch. 468, L. 1999; amd. Sec. 25, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) in first sentence substituted "health care providers" for "medical providers" and deleted last sentence that read: "This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1)"; in (2) at end deleted "The notice must advise the worker of the worker's right to choose the initial treating physician under 39-71-1101(1)"; deleted former (3) that read: "(3) Any postings or other information regarding referral to preferred providers on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to preferred providers, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection 39-71-1101(1)"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1103. Workers' compensation managed care. (1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to 39-71-1101, through appropriate health care professionals.

(2) The department shall develop criteria pursuant to 39-71-1105 for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.

(3) Insurers may contract with certified managed care organizations for medical services for injured workers. A worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services.

History: En. Sec. 7, Ch. 628, L. 1993.

39-71-1104. Managed care organizations — notification. Workers who are subject to managed care must receive medical services in the manner prescribed in the contract. Each contract must comply with the certification requirements provided in 39-71-1105. Insurers who contract with a managed care organization for medical services shall give written notice to workers of eligible service providers and shall give notice of the manner of receiving medical services.

History: En. Sec. 8, Ch. 628, L. 1993.

39-71-1105. Managed care organizations — application — certification. (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care to workers for injuries or occupational diseases that are covered under this chapter. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (4)(f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan.

History: En. Sec. 9, Ch. 628, L. 1993; amd. Sec. 28, Ch. 416, L. 2005.

39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance. An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization, a preferred provider organization, or the treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to health care providers, the insurer, or an agent of the insurer.

History: En. Sec. 10, Ch. 628, L. 1993; amd. Sec. 26, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 in (1) inserted reference to preferred provider organization; in (3) substituted "health care providers" for "medical providers"; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-1107. Domiciliary care — requirements — evaluation. (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the hourly mean wage by area for home health aides, as published by the department in the most recent edition of the Montana Informational Wage Rates by Occupation and adopted annually by the department prior to January 1. The insurer is not liable for more than 8 hours of care each day at the rate in effect at the time that the services are rendered.

History: En. Sec. 11, Ch. 628, L. 1993; amd. Sec. 8, Ch. 117, L. 2007.

39-71-1108. Physician self-referral prohibition. (1) Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

(2) Subsection (1) does not apply to care or services provided directly to an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department.

History: En. Sec. 12, Ch. 628, L. 1993; amd. Sec. 18, Ch. 516, L. 1995.

39-71-1109. Repealed. Sec. 13, Ch. 310, L. 1997.

History: En. Sec. 13, Ch. 628, L. 1993.

Parts 12 through 14 reserved

Part 15
Montana Safety Culture Act

39-71-1501. Short title. This part may be cited as the "Montana Safety Culture Act".

History: En. Sec. 1, Ch. 295, L. 1993; amd. Sec. 1, Ch. 170, L. 2003.

39-71-1502. Purpose. The purpose of this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

History: En. Sec. 2, Ch. 295, L. 1993; amd. Sec. 2, Ch. 170, L. 2003.

39-71-1503. Safety consultation. (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, electronically, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) education and training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise employers relative to risk, exposure, and experience in the employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

History: En. Sec. 3, Ch. 295, L. 1993; amd. Sec. 3, Ch. 170, L. 2003; amd. Sec. 16, Ch. 27, L. 2009.

39-71-1504. Safety programs — educational activities. (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

(3) The department may issue a safety recommendation to an employer who fails to comply with the requirements of this section or with rules adopted by the department pursuant to 39-71-1505.

History: En. Sec. 4, Ch. 295, L. 1993; amd. Sec. 1, Ch. 58, L. 2001.

39-71-1505. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) subject to subsection (3), a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

(3) The department may adopt rules authorizing:

(a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries; or

(b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund.

History: **En. Sec. 5, Ch. 295, L. 1993; amd. Sec. 1, Ch. 238, L. 1995.**

39-71-1506. Notification of safety consultation services available by insurer. To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

History: **En. Sec. 6, Ch. 295, L. 1993.**

39-71-1507. Safety consultation services — safety program as provision of insurance contract or agreement. (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

History: **En. Sec. 7, Ch. 295, L. 1993.**

Cross-References

Safety program requirement in workers' compensation policies, 33-15-318.

39-71-1508. Safety consultation services — insurer's exemption from civil liability — exceptions. (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

History: **En. Sec. 9, Ch. 295, L. 1993.**

Parts 16 through 19 reserved

Part 20
Rehabilitation Benefits
(Renumbered)

39-71-2001. Renumbered 39-71-1006. Code Commissioner, 1995.

Part 21
Compensation Plan Number One

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-2101. General requirements for electing coverage under plan. (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of solvency and financial ability to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably likely to be incurred during the fiscal year for which the election is effective. The employer may, by order of the department and with the concurrence of the guaranty fund, make the payments directly to employees as they become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 163, L. 1991; amd. Sec. 7, Ch. 619, L. 1993.

39-71-2102. Proof of solvency to be filed. Each employer who has elected to be bound by compensation plan No. 1 shall file proof of solvency within the time and in the form prescribed by the rules or orders of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1549, Ch. 56, L. 2009.

39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. (1) If the employer making the election is found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on business for the year within which the election is made and proof filed, or the remaining portion of the year, and to make payments directly to the employees as they may become entitled to receive the payments.

(2) Each individual employer in an association, corporation, limited liability company, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, limited liability company, or organization under this chapter. An association, corporation, limited liability company, or organization of employers given permission to operate as self-insured shall maintain excess liability coverage in amounts and under conditions as provided by rules of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 163, L. 1991; amd. Sec. 19, Ch. 516, L. 1995.

39-71-2104. Renewal of application. An employer, so long as that employer continues to employ and continues to be bound by compensation plan No. 1, shall annually renew the application to be permitted to continue to make payments directly to employees for the next year. The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 163, L. 1991; amd. Sec. 10, Ch. 555, L. 1993.

39-71-2105. Additional proof of solvency — revocation of order. (1) The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the benefits provided by this chapter.

(2) The department may, after providing an opportunity for an administrative review conference to consider information submitted by a plan No. 1 employer, revoke any order of approval upon 20 days' notice to the employer. A decision to revoke approval involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund. A plan No. 1 employer that is dissatisfied with the decision

following the administrative review conference may appeal the decision and request a contested case hearing pursuant to 39-71-2401(2).

(3) A decision revoking an order of approval is final unless the employer files an appeal with the department within 20 days of the issuance of the notice. An employer may not continue to self insure after the 20-day period provided for in subsection (2) has expired unless the department is satisfied that the employer has provided sufficient security and financial ability to pay the benefits provided by this chapter. A decision issued pursuant to this subsection involving a plan No. 1 employer who is a member of the Montana self-insurers guaranty fund requires the concurrence of the guaranty fund.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 150, L. 1993; amd. Sec. 7, Ch. 69, L. 2005.

39-71-2106. Requiring security of employer. (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. The security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and the Montana self-insurers guaranty fund. For the first 3 years of operating as a self-insured employer, the employer's security deposit must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the first 3 of the last 4 completed calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of ability to pay the benefits provided by this chapter.

(c) The department may, with the concurrence of the Montana self-insurers guaranty fund, reduce the amount of the security deposit if the evidence indicates that the full amount of the deposit is unnecessary.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require an employer to give security in addition to the security deposit described in subsection (1) if:

(i) the department, with the concurrence of the Montana self-insurers guaranty fund, determines that the employer lacks the ability to pay the benefits that are expected to be paid by the employer under the terms and conditions of this chapter that are chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to pay the benefits provided under the terms and conditions of this chapter that the employer may accrue during the year.

(3) (a) The security deposit provided for in subsection (1) must be deposited with the department. The security deposit may consist of:

(i) a bond executed to the department with a surety. The security deposit must state that the employer will pay or cause to be paid to employees the amount for which the employer was given permission under 39-71-2103 and for which the employer is liable under the terms and conditions of this chapter during the year.

(ii) any Montana state, county, municipal, or school district bonds that the department and the Montana self-insurers guaranty fund consider solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) Each security deposit and the character and amount of the security deposit are subject to approval, revision, or change considered necessary by the department and the Montana self-insurers guaranty fund.

(c) Upon proof of the final payment of the liability for which the security deposit is given, the security deposit or any remainder of the security deposit must be returned to the depositor.

(d) Payment must be made from the security deposit within 30 days of a demand by the department for payment. If payment is not made within 30 days by the obligor on the security deposit, the obligor is liable to the department for interest at the annual rate of 10% on the amount unpaid.

(4) The department is liable for the value and safekeeping of all security deposits and shall, at any time, upon demand of the depositor, account for the security deposits.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985; amd. Sec. 51, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 120, L. 1991; amd. Sec. 9, Ch. 558, L. 1991; amd. Sec. 2, Ch. 150, L. 1993; amd. Sec. 11, Ch. 555, L. 1993; amd. Sec. 1, Ch. 83, L. 1995; amd. Sec. 9, Ch. 117, L. 2007.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the department for the protection and guaranty of the payment of such liability in such sum as the department may direct. However, if sufficient securities are already on deposit with the department or if the department determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2108. Failure of employer to pay benefits — duty of department. Upon the failure of the employer to pay any benefits provided for in this chapter upon the terms, in the amounts, and at the times when the benefits become due and payable, the department shall, upon demand of the person to whom benefits are due, apply any deposits made with the department to the payment of the benefits, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient deposits to pay the liabilities of the employer accruing under the terms of this chapter. The department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds that may be given by the employer to ensure the payment of the employer's liability. The department is considered the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities. All interest earnings on liquidated security deposits must be retained by the department for payment of benefits pursuant to this section.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 69, L. 2005.

39-71-2109. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 163, L. 1991.

39-71-2110 through 39-71-2114 reserved.

39-71-2115. Transfer of claim liabilities — rules. (1) A current or former self-insurer or group may transfer existing workers' compensation claim liabilities to another entity upon authorization from the department and concurrence of the Montana self-insurers guaranty fund by:

(a) submitting an application on a form designated by the department;

(b) completing an agreement of assumption and guarantee of workers' compensation liabilities;

(c) submitting a loss portfolio transfer agreement; and

(d) posting a security deposit.

(2) If the assuming entity fails to meet the terms of the transfer agreement, liability reverts to the original self-insurer.

(3) The entity assuming liability for a claim shall comply with all reporting requirements set by the department.

(4) The department shall adopt rules to implement this section.

History: En. Sec. 2, Ch. 112, L. 2009.

Part 22
Compensation Plan Number Two

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.
Employee defined, 39-71-118.
Injury defined, 39-71-119.

39-71-2201. Election to be bound by plan — captive reciprocal insurers. (1) Any employer except those specified in 39-71-403 may, by filing an election to become bound by compensation plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make the election on the form and in the manner prescribed by the department.

(3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may not be a member of an insurance guaranty association or guaranty fund.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 117, L. 2007.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer:

(a) the notice to or knowledge of the occurrence of the injury on the part of the insured constitutes notice or knowledge, as the case may be, on the part of the insurer;

(b) jurisdiction of the insured for the purpose of this chapter is the jurisdiction of the insurer; and

(c) the insurer is in all things bound by and subject to the awards, orders, judgments, or decrees rendered against the insured.

(2) A policy may not be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments provided for in this chapter and that the obligation is not affected by any default of the insured after the injury or by any default in the giving of any notice required by the policy or by this chapter or otherwise. The agreement must be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer is directly and primarily liable to and will pay directly to the employee or in case of death to the employee's beneficiaries or major or minor dependents the compensation, if any, for which the employer is liable.

(4) Every policy must at all times be subject to approval, change, or revision by the department and must contain the clauses, agreements, and promises required by this chapter.

(5) All Montana operations of an employer, as defined in 39-71-117, covered under plan No. 2 must be insured by the same insurer.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 69, L. 2005.

Cross-References

Policies to provide for freedom of choice in selection of practitioners — professional practice not enlarged, 33-22-111.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of a policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information that may be required by the department. Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of not more than $200 against an insurer that does not comply with the 30-day notice requirement set forth in subsection (1). The penalty may be assessed for each policy that is not reported to the department in a timely manner.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 555, L. 1993; amd. Sec. 25, Ch. 186, L. 1995; amd. Sec. 14, Ch. 214, L. 2001; amd. Sec. 10, Ch. 69, L. 2005; amd. Sec. 11, Ch. 117, L. 2007.

39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured. Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for authorized workers' compensation insurers in Montana; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1). The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 1, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 555, L. 1993; amd. Sec. 26, Ch. 186, L. 1995; amd. Sec. 15, Ch. 214, L. 2001; amd. Sec. 11, Ch. 69, L. 2005; amd. Sec. 12, Ch. 117, L. 2007.

39-71-2206. Repealed. Sec. 13, Ch. 310, L. 1997.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979; amd. Sec. 1, Ch. 242, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 14, Ch. 555, L. 1993.

39-71-2207. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2208. Repealed. Sec. 16, Ch. 117, L. 2007.

History: En. Sec. 1, Ch. 69, L. 2005.

39-71-2209 and 39-71-2210 reserved.

39-71-2211. Premium rates for construction industry — filing required. (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at 1.168 times the state's average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section.

History: En. Sec. 3, Ch. 480, L. 1991; amd. Sec. 1, Ch. 224, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 27, Ch. 186, L. 1995; amd. Sec. 1, Ch. 131, L. 1999; amd. Sec. 8, Ch. 26, L. 2005.

39-71-2212 through 39-71-2214 reserved.

39-71-2215. Security deposit to ensure payment of liability of plan No. 2 insurer. (1) Except as provided in subsection (7), a plan No. 2 insurer issuing or renewing a policy on or after January 1, 2008, shall post a security deposit with the department as provided by this section. The purpose of the security deposit is to provide a ready source of funds to pay claims arising under this chapter if the plan No. 2 insurer:

(a) becomes insolvent;

(b) is placed in receivership;

(c) declares bankruptcy;

(d) seeks protection from its creditors; or

(e) is otherwise unwilling or unable to pay its liabilities arising under this chapter.

(2) The amount of the security deposit, which is subject to the discretion of the department, must be in an amount from $25,000 to $250,000. The security deposit must be posted in the form of:

(a) a certificate of deposit;

(b) a United States treasury note; or

(c) an irrevocable letter of credit.

(3) If a plan No. 2 insurer fails to discharge any determined liability within the time set by the department, the department may convert the security deposit to cash and use the proceeds to pay the liability. Upon the conversion, the plan No. 2 insurer shall immediately furnish additional security to the department in an amount determined by the department to provide reasonable assurance that all current and future liabilities incurred by the plan No. 2 insurer as a result of the coverage provided under this chapter can be fully paid.

(4) (a) The security deposit required by this section is the property of the department and is held in trust by the department for the payment of the liabilities of the plan No. 2 insurer incurred under this chapter.

(b) Any earnings made by the security deposit accrue to the insurer.

(c) Upon proof of final payment of all liabilities incurred under this chapter, the unexpended portion of the security deposit must be discharged and any proceeds remaining are payable to the plan No. 2 insurer.

(5) In the event of the insolvency of a plan No. 2 insurer, the department may, in its discretion, release part or all of the security deposit to the Montana insurance guaranty association, provided for in 33-10-103, for payment of the plan No. 2 insurer's Montana workers' compensation claims if:

(a) the plan No. 2 insurer has been determined to be insolvent by a court of competent jurisdiction or is the debtor in a bankruptcy proceeding;

(b) the plan No. 2 insurer is unable to pay its workers' compensation claims; and

(c) the plan No. 2 insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

(6) The department is authorized to share information and coordinate its actions with the Montana insurance commissioner and other appropriate regulatory agencies with respect to actions taken pursuant to this section.

(7) A captive reciprocal insurer specified in 39-71-2201 is not subject to this section.

History: En. Sec. 15, Ch. 117, L. 2007; amd. Sec. 3, Ch. 150, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 150 in (4)(b) at end substituted "insurer" for "security deposit". Amendment effective July 1, 2011.

Part 23
Compensation Plan Number Three

Part Cross-References

Definitions, 39-71-116.
Employer defined, 39-71-117.

39-71-2301. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101; amd. Sec. 1, Ch. 232, L. 1987.

39-71-2303. Renumbered 39-71-2336. Code Commissioner, 1989.

39-71-2304. Repealed. Sec. 59, Ch. 613, L. 1989.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983; amd. Sec. 2, Ch. 232, L. 1987; amd. Sec. 1, Ch. 239, L. 1987; amd. Sec. 10, Ch. 333, L. 1989; amd. Sec. 2, Ch. 641, L. 1989.

39-71-2305. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1; amd. Sec. 1, Ch. 109, L. 1987.

39-71-2306. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Renumbered 39-71-2339. Code Commissioner, 1989.

39-71-2308. Renumbered 39-71-2340. Code Commissioner, 1989.

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311. Intent and purpose of plan — expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

(2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

(3) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy.

History: En. Sec. 1, Ch. 613, L. 1989; amd. Sec. 7, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 323, L. 1991; amd. Sec. 12, Ch. 295, L. 1993; amd. Sec. 1, Ch. 305, L. 1995; amd. Sec. 7, Ch. 314, L. 2001; amd. Sec. 3, Ch. 218, L. 2009.

39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

(2) "Executive director" means the chief executive officer of the state compensation insurance fund.

(3) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.

History: En. Sec. 2, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 9, Ch. 26, L. 2005.

39-71-2313. State compensation insurance fund created — obligation to insure. (1) There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

(2) The state fund is required to insure any employer in this state who requests coverage, and it may not refuse to provide coverage unless an employer or the employer's principals have defaulted on a state fund obligation and the default remains unsatisfied.

History: En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 305, L. 1995.

39-71-2314. State fund subject to laws applying to state agencies. The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.

History: En. Sec. 10, Ch. 613, L. 1989; amd. Sec. 9, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 630, L. 1993; amd. Sec. 11, Ch. 310, L. 1997.

39-71-2315. Management of state fund — powers and duties of the board — business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(6) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132.

History: En. Sec. 5, Ch. 613, L. 1989; amd. Sec. 10, Ch. 4, Sp. L. May 1990; amd. Sec. 19, Ch. 619, L. 1993; amd. Sec. 2, Ch. 407, L. 1999.

39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

(n) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in 39-71-2320.

History: En. Sec. 8, Ch. 613, L. 1989; amd. Sec. 11, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 630, L. 1993; amd. Sec. 28, Ch. 186, L. 1995; amd. Sec. 3, Ch. 305, L. 1995; amd. Secs. 15, 16, Ch. 276, L. 1997; amd. Sec. 8, Ch. 314, L. 2001; amd. Sec. 1, Ch. 603, L. 2003; amd. Sec. 51, Ch. 130, L. 2005.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Workers' compensation coverage, liability, and subrogation, Title 39, ch. 71, part 4.

39-71-2317. Appointment of executive director — management staff. The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

History: En. Sec. 7, Ch. 613, L. 1989.

39-71-2318. Personal liability excluded. The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

History: En. Sec. 6, Ch. 613, L. 1989.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure of state government, Title 2, ch. 9, part 1.

39-71-2319. Assets and liabilities of prior state fund. All assets and funds held by the state compensation insurance fund established in former 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324 and 39-71-2321 through 39-71-2323, 39-71-2325 through 39-71-2327, 39-71-2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

History: En. Sec. 11, Ch. 613, L. 1989.

39-71-2320. Property of state fund — investment required — exception. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section.

History: En. Sec. 9, Ch. 613, L. 1989; amd. Sec. 3, Ch. 424, L. 1995; amd. Sec. 17, Ch. 276, L. 1997; amd. Sec. 2, Ch. 603, L. 2003.

39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of money, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund. Except for a transfer authorized under 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund may be spent as provided in 17-8-101(2)(b).

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989; amd. Sec. 12, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 797, L. 1991; amd. Sec. 10, Ch. 630, L. 1993; amd. Secs. 18, 19, Ch. 276, L. 1997; amd. Sec. 6, Ch. 184, L. 1999; amd. Sec. 21, Ch. 389, L. 1999; amd. Sec. 26, Ch. 475, L. 2007.

39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter. The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983; amd. Sec. 33, Ch. 613, L. 1989; amd. Sec. 20, Ch. 276, L. 1997; amd. Sec. 3, Ch. 603, L. 2003.

39-71-2323. Surplus in state fund — payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and an appropriate surplus as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989; amd. Sec. 13, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 630, L. 1993; amd. Sec. 3, Ch. 407, L. 1999.

39-71-2324. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.

39-71-2325. State fund to keep accounts of segregations. The state fund shall keep an accurate account of all the segregations of the state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983; amd. Sec. 35, Ch. 613, L. 1989.

39-71-2326. Repealed. Sec. 6, Ch. 664, L. 1987.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

39-71-2327. Earnings of state fund to be credited to fund — improper use a felony. All earnings made by the state fund by reason of interest paid for the deposit of funds or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983; amd. Sec. 36, Ch. 613, L. 1989; amd. Sec. 21, Ch. 276, L. 1997; amd. Sec. 4, Ch. 603, L. 2003.

39-71-2328. State fund alternative personal leave plan — exception — collective bargaining negotiation — personal leave definition. (1) Except as provided in subsection (2), the state fund, after consultation with the department of administration, may develop an alternative personal leave plan for all state compensation insurance fund employees. The number of days and the rate at which the number of days are earned for the alternative personal leave plan must be the same as the combined total of days provided for in 2-18-612 and 2-18-618. Prior to implementation, the alternative personal leave plan must be adopted by the board and the board may adopt changes to the plan.

(2) The state fund, after consultation with the department of administration, may develop one or more alternative personal leave plans for some or all of its employees or may choose to develop an alternative personal leave plan for a particular class of employees or work unit.

(3) To the extent that an alternative personal leave plan applies to an employee who is a member of a collective bargaining unit, the implementation of the personal leave plan is subject to negotiation under 39-31-305.

(4) As used in this section, "personal leave" means all leave provided to an employee under the provisions of Title 2, chapter 18, part 6.

History: En. Sec. 1, Ch. 314, L. 2001.

39-71-2329 reserved.

39-71-2330. Rate setting — surplus — multiple rating tiers. (1) The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements.

(3) The board may implement multiple rating tiers for classifications that take into consideration losses, premium size, and other factors relevant in placing an employer within a rating tier.

History: En. Sec. 7, Ch. 630, L. 1993; amd. Sec. 4, Ch. 407, L. 1999; amd. Sec. 9, Ch. 314, L. 2001.

Cross-References

Powers of State Fund, 39-71-2316.

39-71-2331. Workplace safety program. (1) An employer that is not eligible for the tier with the lowest-rated premium for workers' compensation purposes is eligible to join a state fund pooled risk safety group, as provided in 39-71-2332, if the employer:

(a) adopts and maintains a written, comprehensive workplace safety program that has been in place for more than 1 year and that meets the criteria established by rule implementing Title 39, chapter 71, part 15;

(b) adopts transitional and return-to-work programs;

(c) has at least 3 years of experience without losses;

(d) uses available safety consultation services or programs offered by the department or the state fund. Safety consultation may be provided to individual employers or to groups. The department and the state fund shall notify each employer in a group, as provided in 39-71-2332, regarding the availability of safety and return-to-work resources.

(e) complies with the terms and conditions of the state fund pooled risk safety group as provided in 39-71-2332.

(2) The state fund and the department shall share information on workplace safety programs and transitional and return-to-work programs.

History: En. Sec. 1, Ch. 218, L. 2009.

39-71-2332. Pooled risk safety group. (1) The state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.

(2) Each member of a pooled risk safety group must be eligible as provided in 39-71-2331 and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.

(3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.

(4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.

History: En. Sec. 2, Ch. 218, L. 2009.

39-71-2333 through 39-71-2335 reserved.

39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. All Montana operations of an employer, as defined in 39-71-117, covered by compensation plan No. 3 must be insured by the state compensation insurance fund. The premium must be paid by the employer to the state fund at times that the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103; amd. Sec. 3, Ch. 283, L. 1983; amd. Sec. 29, Ch. 613, L. 1989; Sec. 39-71-2303, MCA 1987; redes. 39-71-2336 by Code Commissioner, 1989; amd. Sec. 12, Ch. 69, L. 2005.

39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires. Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of coverage received from the agents recognized under subsection (2)(a) as the state fund's notice of coverage.

(3) The department may assess a penalty of not more than $200 against the state fund if the state fund does not comply with the 30-day notice requirement. The penalty may be assessed for each policy that is not reported to the department in a timely manner.

History: En. Sec. 44, Ch. 613, L. 1989; amd. Sec. 16, Ch. 214, L. 2001; amd. Sec. 13, Ch. 69, L. 2005; amd. Sec. 13, Ch. 117, L. 2007.

39-71-2338. Repealed. Sec. 8, Ch. 323, L. 1991.

History: En. Sec. 45, Ch. 613, L. 1989.

39-71-2339. Cancellation of coverage — twenty days' notice required. (1) The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured and the department at least 20 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 20 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. This section does not prevent the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued. Notice to the department under this section must be provided electronically.

(2) The department:

(a) may recognize the advisory organization designated under 33-16-1023 or recognize other organizations as agents for the state fund; and

(b) shall, under terms and conditions acceptable to the department, accept notice of cancellation received from the agents recognized under subsection (2)(a) as the state fund's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against the state fund if it does not comply with the notice requirement in subsection (1).

(b) The penalty may be assessed for each policy cancellation that is not reported to the department in a timely manner.

(c) The state fund may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 30, Ch. 613, L. 1989; Sec. 39-71-2307, MCA 1987; redes. 39-71-2339 by Code Commissioner, 1989; amd. Sec. 7, Ch. 323, L. 1991; amd. Sec. 4, Ch. 305, L. 1995; amd. Sec. 17, Ch. 214, L. 2001; amd. Sec. 14, Ch. 69, L. 2005; amd. Sec. 23, Ch. 112, L. 2009.

39-71-2340. Collection in case of default. (1) If an employer under plan No. 3 defaults in any payment to the state fund, the state fund may collect the sum due in a civil action in the name of the state. The right of action is cumulative.

(2) If an employer's right to operate has been canceled by the state fund for failure to pay premiums and the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 31, Ch. 613, L. 1989; Sec. 39-71-2308, MCA 1987; redes. 39-71-2340 by Code Commissioner, 1989.

39-71-2341. Repealed. Secs. 11, 14(3), Ch. 314, L. 2001.

History: En. Sec. 10, Ch. 295, L. 1993; amd. Sec. 5, Ch. 407, L. 1999.

39-71-2342 through 39-71-2350 reserved.

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

History: En. Sec. 1, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 797, L. 1991; amd. Sec. 1, Ch. 637, L. 1993; amd. Sec. 22, Ch. 276, L. 1997.

39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — authorizing transfer of money. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; and

(b) the cost of administering the claims.

(5) An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for injuries resulting from accidents that occurred before July 1, 1990, must be transferred from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid.

History: En. Sec. 2, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 797, L. 1991; amd. Sec. 6, Ch. 630, L. 1993; amd. Secs. 23, 24, Ch. 276, L. 1997; amd. Sec. 7, Ch. 184, L. 1999; amd. Sec. 1, Ch. 16, Sp. L. August 2002; amd. Sec. 1, Ch. 588, L. 2003; amd. Sec. 57, Ch. 2, L. 2009.

Compiler's Comments

2011 Purported Amendment — Line-Item Veto: Section 5, Ch. 312, L. 2011, purported to amend this section. The Governor removed this section from the bill in a line-item veto issued May 4, 2011.

39-71-2353. Repealed. Sec. 9, Ch. 797, L. 1991.

History: En. Sec. 4, Ch. 4, Sp. L. May 1990.

39-71-2354. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 797, L. 1991; amd. Sec. 9, Ch. 637, L. 1993; amd. Sec. 38, Ch. 422, L. 1997.

39-71-2355. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 797, L. 1991.

39-71-2356. Mutually agreeable lump-sum settlements. During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

History: En. Sec. 3, Ch. 797, L. 1991.

39-71-2357 through 39-71-2360 reserved.

39-71-2361. Legislative audit of state fund — annual review of audit and rate review by insurance commissioner. The legislative auditor shall annually:

(1) conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

(2) provide the results of the financial and compliance audit for operations related to claims for injuries resulting from accidents on or after July 1, 1990, as provided in subsection (1), and the rate review as provided in 39-71-2362 to the insurance commissioner. The insurance commissioner shall review the financial and compliance audit and rate review and report any concerns or recommendations based on the review to the governor, the legislative audit committee, and the economic affairs interim committee.

History: En. Sec. 5, Ch. 4, Sp. L. May 1990; amd. Sec. 27, Ch. 167, L. 2011.

Compiler's Comments

2011 Amendment: Chapter 167 inserted (2) relating to the insurance commissioner and results of the audit and rate review; and made minor changes in style. Amendment effective April 12, 2011.

Applicability — Retroactive Applicability: Section 35, Ch. 167, L. 2011, provided: "(1) Except as provided in subsections (2) and (3), [this act] applies to injuries and occupational diseases occurring on or after July 1, 2011.

(2) The use of the sixth edition of the American medical association's Guides to the Evaluation of Permanent Impairment, referenced in 39-71-116, 39-71-703, and 39-71-711, as amended by [this act], is retroactive to January 1, 2008, for impairment ratings issued after that date.

(3) [Section 14] [39-71-741] applies retroactively, within the meaning of 1-2-109, to claims for injuries or occupational diseases for which all benefits have not been settled.

(4) The provisions of [sections 15 through 23] [39-71-1011, 39-71-1025, 39-71-1031, 39-71-1041 through 39-71-1043, and 39-71-1049 through 39-71-1051], apply to injuries occurring on or after July 1, 2012."

39-71-2362. Authority of legislative auditor with respect to state fund. The legislative auditor shall review rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. Each year, the legislative auditor shall:

(1) examine the state fund beginning no sooner than October 1 following the end of the fiscal year; and

(2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund.

History: En. Sec. 8, Ch. 630, L. 1993.

39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4, part 1.

(2) (a) Except as provided in 2-15-2015, the executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. A copy of the approved budget must be delivered to the governor and the legislature.

(b) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(c) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.

History: En. Sec. 9, Ch. 630, L. 1993; amd. Sec. 4, Ch. 424, L. 1995; amd. Sec. 25, Ch. 276, L. 1997; amd. Sec. 52, Ch. 7, L. 2001; amd. Sec. 10, Ch. 314, L. 2001.

39-71-2364 through 39-71-2369 reserved.

39-71-2370. Claims expenditures codes. The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure.

History: En. Sec. 20, Ch. 555, L. 1993; Sec. 39-71-226, MCA 2003; redes. 39-71-2370 by Sec. 11, Ch. 26, L. 2005.

Part 24
Mediation

Part Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response must state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if the mediator finds that either party did not comply with this subsection (4). A decision dismissing a petition under this subsection (4)(c) must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) This subsection (4) does not relieve a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 558, L. 1991; amd. Sec. 29, Ch. 416, L. 2005; amd. Sec. 1550, Ch. 56, L. 2009.

39-71-2402 through 39-71-2405 reserved.

39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under this chapter if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989; amd. Sec. 30, Ch. 416, L. 2005.

39-71-2407. Department authority — rules. (1) The department shall designate mediators and shall implement the provisions of this part.

(2) The department may adopt the rules necessary to implement this part. The rules may prescribe:

(a) the qualifications of mediators; and

(b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: En. Sec. 53, Ch. 464, L. 1987.

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under this chapter, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: En. Sec. 54, Ch. 464, L. 1987; amd. Sec. 31, Ch. 416, L. 2005.

39-71-2409. Duties of mediator. A mediator shall assist the parties in negotiating a resolution to their dispute by:

(1) facilitating an exchange of information between the parties;
(2) assuring that all relevant information is brought forth during the mediation process;
(3) suggesting possible solutions to issues of dispute between the parties;
(4) recommending a solution; and
(5) assisting the parties to voluntarily resolve their dispute.

History: En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.

39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(8)(c), mediation proceedings must be:

(a) held in private;
(b) informal and held without a verbatim record; and
(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all persons but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) The mediator's report and any of the information or recommendations contained in the report are not admissible as evidence in any action subsequently brought in any court of law.

(5) Subsections (1) through (4) do not prohibit a mediator from issuing a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989; amd. Sec. 11, Ch. 558, L. 1991; amd. Sec. 1, Ch. 39, L. 2005.

39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under this chapter may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The claimant and an employee of the insurer or an authorized third-party examiner with settlement authority shall attend any scheduled mediation conference in person or shall participate by telephone conference call.

(5) The mediator shall request that each party offer an argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(6) After the parties have presented all their information and arguments to the mediator, the mediator shall recommend a solution to the parties within a reasonable time to be established by rule.

(7) A party shall notify the mediator within 25 days of the mailing of the mediator's report as to whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(8) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (8)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 516, L. 1995; amd. Sec. 2, Ch. 39, L. 2005; amd. Sec. 32, Ch. 416, L. 2005.

Part 25
Employer's Old Fund Liability Tax
(Repealed)

39-71-2501. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989; amd. Sec. 14, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 637, L. 1993; amd. Sec. 2, Ch. 172, L. 1995; amd. Sec. 1, Ch. 246, L. 1995; amd. Sec. 48, Ch. 509, L. 1995; amd. Sec. 6, Ch. 572, L. 1995; amd. Sec. 26, Ch. 276, L. 1997; amd. Sec. 31, Ch. 491, L. 1997.

39-71-2502. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 2, Ch. 664, L. 1987; amd. Sec. 15, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 637, L. 1993.

39-71-2503. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 664, L. 1987; amd. Sec. 16, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 220, L. 1991; amd. Sec. 7, Ch. 797, L. 1991; amd. Sec. 4, Ch. 637, L. 1993; amd. Sec. 3, Ch. 172, L. 1995; amd. Sec. 2, Ch. 246, L. 1995; amd. Sec. 49, Ch. 509, L. 1995; amd. Sec. 6, Ch. 529, L. 1995; amd. Sec. 7, Ch. 572, L. 1995; amd. Sec. 27, Ch. 276, L. 1997; amd. Sec. 39, Ch. 422, L. 1997; amd. Secs. 32, 33, 39(2), Ch. 491, L. 1997.

39-71-2504. Repealed. Sec. 31(1), Ch. 276, L. 1997.

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989; amd. Sec. 17, Ch. 4, Sp. L. May 1990; amd. Sec. 8, Ch. 797, L. 1991; amd. Sec. 33, Ch. 455, L. 1993; amd. Sec. 6, Ch. 637, L. 1993; amd. Sec. 47, Ch. 18, L. 1995; amd. Sec. 50, Ch. 509, L. 1995.

39-71-2505. Repealed. Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 5, Ch. 637, L. 1993; amd. Sec. 1, Ch. 27, L. 1995; amd. Sec. 28, Ch. 276, L. 1997; amd. Sec. 34, Ch. 491, L. 1997.

39-71-2506. Repealed. Secs. 31(2), 34(3), Ch. 276, L. 1997.

History: En. Sec. 3, Ch. 572, L. 1995.

39-71-2507. Repealed. Sec. 8, Ch. 184, L. 1999.

History: En. Sec. 6, Ch. 491, L. 1997.

Part 26
Self-Insurers Guaranty Fund

Part Cross-References

Insurance guaranty associations, Title 33, ch. 10.

39-71-2601. Short title. This part may be cited as the "Montana Self-Insurers Guaranty Fund Act".

History: En. Sec. 1, Ch. 244, L. 1989.

39-71-2602. Purpose — construction. (1) The purposes of this part are to provide a mechanism for the payment of covered workers' compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.

(2) This part must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act's interpretation.

History: En. Sec. 2, Ch. 244, L. 1989.

39-71-2603. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the Montana self-insurers guaranty fund.

(2) "Fund" means the Montana self-insurers guaranty fund established pursuant to 39-71-2609.

(3) "Insolvent private self-insurer" means an employer:

(a) (i) that is unable to pay workers' compensation claims because:

(A) it has been determined to be insolvent by a court of competent jurisdiction; or

(B) bankruptcy proceedings have been instituted by or against it; or

(ii) whose claims are not being paid on its behalf; and

(b) whose security has been exhausted pursuant to 39-71-2108.

(4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.

(5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

History: En. Sec. 3, Ch. 244, L. 1989.

39-71-2604. Board of directors of fund. (1) There is a board of directors of the Montana self-insurers guaranty fund.

(2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.

(3) Board members are elected by the members of the fund, with each member having one vote.

(4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

History: En. Sec. 4, Ch. 244, L. 1989.

39-71-2605 through 39-71-2608 reserved.

39-71-2609. Establishment of fund — employer participation required. (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

History: En. Sec. 5, Ch. 244, L. 1989; amd. Sec. 5, Ch. 163, L. 1991.

39-71-2610. Rulemaking — powers of fund. (1) The board shall establish the rules necessary to carry out the purposes of this part and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

History: En. Sec. 6, Ch. 244, L. 1989.

39-71-2611. Duties, liabilities, and rights of fund. (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

(4) The fund shall concur in department decisions relating to allowing an employer to self-insure.

History: En. Sec. 7, Ch. 244, L. 1989; amd. Sec. 6, Ch. 163, L. 1991.

39-71-2612 through 39-71-2614 reserved.

39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) (a) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the following benefits paid by each member during the preceding calendar year:

(i) compensation benefits; and

(ii) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, the total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(b) Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund in any year following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the benefits paid during the last calendar year immediately preceding the annual assessment.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

History: En. Sec. 8, Ch. 244, L. 1989; amd. Sec. 15, Ch. 555, L. 1993; amd. Sec. 1, Ch. 68, L. 2001; amd. Sec. 1, Ch. 226, L. 2003.

39-71-2616. Reimbursement for obligations paid and assumed. (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.

(2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.

(3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.

(4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:

(a) any excess insurance carrier of the private self-insurer; and

(b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the department.

History: En. Sec. 9, Ch. 244, L. 1989.

39-71-2617. Tax exemption. The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

History: En. Sec. 10, Ch. 244, L. 1989.

39-71-2618. Immunity. There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its agents or employees, or the board for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 11, Ch. 244, L. 1989.

39-71-2619. Notification of insolvency by private self-insurer. As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the department and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

History: En. Sec. 12, Ch. 244, L. 1989.

39-71-2620. Audit requirement. Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

(1) contract for an independent certified audit of the financial activities of the fund; and

(2) report on the financial status of the fund to the department and to fund members.

History: En. Sec. 13, Ch. 244, L. 1989.

Parts 27 and 28 reserved

Part 29
Workers' Compensation Judge

Part Cross-References

Definitions, 39-71-116.

39-71-2901. Location of office — court powers — withdrawal — substitution. (1) The principal office of the workers' compensation judge must be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers' compensation judge shall withdraw from all or part of any matter if the judge believes the circumstances make disqualification appropriate. In the case of a withdrawal, the workers' compensation judge shall designate and contract for a substitute workers' compensation judge to preside over the proceeding from the list provided for in subsection (4). The substitute judge must be compensated at the same hourly rate charged by the department of justice agency legal services bureau for the provision of legal services to state agencies. The substitute judge must be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503. When the substitute judge has accepted jurisdiction, the clerk of the workers' compensation court shall mail a copy of the assumption of jurisdiction to each attorney or party of record. The certificate of service must be attached to the assumption of jurisdiction form in the court file.

(4) The workers' compensation judge shall maintain a list of persons who are interested in serving as a substitute workers' compensation judge in the event of a recusal by the judge and who prior to being put on the list of potential substitutes have been admitted to the practice of law in Montana for at least 5 years, currently reside in Montana, and have resided in the state for 2 years.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987; amd. Sec. 1, Ch. 20, L. 2009.

Cross-References

Rules describing agency organization and procedures, 2-4-201.

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act and rules of evidence applicable. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers' compensation judge is bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1); amd. Sec. 59, Ch. 464, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge — time limit on filing. (1) If a claimant, an insurer, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in this chapter. If the dispute relates to benefits due to a claimant under this chapter, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under this chapter, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under this chapter are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under this chapter.

(2) A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985; amd. Sec. 60, Ch. 464, L. 1987; amd. Sec. 21, Ch. 516, L. 1995; amd. Sec. 29, Ch. 276, L. 1997; amd. Sec. 24, Ch. 112, L. 2009.

39-71-2906. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. (1) The workers' compensation judge may increase by 20% the full amount of benefits due a claimant during the period of delay or refusal to pay, when:

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.

(2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(3) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979; amd. Sec. 61, Ch. 464, L. 1987; amd. Sec. 1, Ch. 174, L. 1991.

39-71-2908. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed or that the claimant received benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979; amd. Sec. 62, Ch. 464, L. 1987; amd. Sec. 2, Ch. 235, L. 1995.

39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions that the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining the approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 22, Montana Rules of Appellate Procedure.

History: En. Sec. 1, Ch. 74, L. 1989; amd. Sec. 1551, Ch. 56, L. 2009.

39-71-2911. Stay pending determination by district court. Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

History: En. Sec. 1, Ch. 243, L. 1995.

39-71-2912 and 39-71-2913 reserved.

39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in the attorney's individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign the party's petition, pleading, motion, or other paper and state the party's address.

(3) The signature of an attorney or party constitutes a certificate by the attorney or party that:

(a) the attorney or party has read the petition, pleading, motion, or other paper;

(b) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

History: En. Sec. 63, Ch. 464, L. 1987; amd. Sec. 1552, Ch. 56, L. 2009.

Parts 30 through 39 reserved

Part 40
Catastrophically Injured Worker's Travel Assistance Act

39-71-4001. Short title. This part may be cited as the "Catastrophically Injured Worker's Travel Assistance Act".

History: En. Sec. 1, Ch. 345, L. 2005.

39-71-4002. Purpose and intent. The purpose of this part is to assist catastrophically injured workers and their families by providing that funds raised by community service organizations may be matched with funds from insurers to help the workers and their families defray the costs of travel and lodging expenses incurred by family members or, if a family member is unavailable, by a person designated by the injured worker or approved by the insurer when traveling to be with the worker.

History: En. Sec. 2, Ch. 345, L. 2005.

39-71-4003. Definitions. As used in this part, the following definitions apply:

(1) "Catastrophically injured" means a physical injury or occupational disease incurred by a worker to the extent that treatment for the injury or occupational disease:

(a) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is in Montana but that is more than 100 miles from the worker's place of residence; or

(b) requires inpatient care for at least 21 consecutive days in a hospital or rehabilitation center that is located outside Montana; and

(c) occurs within 90 days of the accident or events causing the worker to be catastrophically injured.

(2) "Community service organization" means a community-based, nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code that raises money to assist the catastrophically injured worker.

(3) "Worker" has the meaning as provided in 39-71-118.

History: En. Sec. 3, Ch. 345, L. 2005.

39-71-4004. Catastrophically injured worker's travel assistance program — rulemaking authority. (1) Pursuant to subsection (3), the department of labor and industry shall establish criteria to certify that the funds raised by community service organizations are eligible for matching funds from an insurer.

(2) Money raised by community service organizations to pay travel expenses for a catastrophically injured worker pursuant to this section may not be used by community service organizations to require matching funds by an insurer in an amount greater than $2,500 for each catastrophic injury.

(3) The department shall adopt rules to administer 39-71-704 and this section.

History: En. Sec. 4, Ch. 345, L. 2005.

CHAPTER 72
OCCUPATIONAL DISEASE ACT OF MONTANA
(Repealed)

Part 1 — General Provisions
(Repealed)

Part 2 — Administrative Provisions
(Repealed)

Part 3 — Coverage and Liability
(Repealed)

Part 4 — Presentment and Payment of Claims Generally
(Repealed)

Part 5 — Pneumoconiosis
(Repealed)

Part 6 — Medical Examinations—Determining Compensability of Claims
(Repealed)

Part 7 — Compensation and Benefits
(Repealed)

Part 1
General Provisions
(Repealed)

39-72-101. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Repealed. Sec. 38, Ch. 416, L. 2005.

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979; amd. Sec. 64, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 480, L. 1991.

39-72-103. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.

39-72-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.

Part 2
Administrative Provisions (Repealed)

39-72-201. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302; amd. Sec. 37, Ch. 613, L. 1989.

39-72-202. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352; amd. Sec. 64, Ch. 613, L. 1989.

39-72-203. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345; amd. Sec. 64, Ch. 613, L. 1989.

39-72-204. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346; amd. Sec. 64, Ch. 613, L. 1989.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.

39-72-206. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343; amd. Sec. 64, Ch. 613, L. 1989.

Part 3
Coverage and Liability (Repealed)

39-72-301. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

39-72-303. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310; amd. Sec. 1, Ch. 112, L. 1985; amd. Sec. 5, Ch. 619, L. 1993.

39-72-304. Repealed. Sec. 13, Ch. 558, L. 1991.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7); amd. Sec. 64, Ch. 613, L. 1989.

39-72-305. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

39-72-306. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1; amd. Sec. 38, Ch. 613, L. 1989.

Part 4
Presentment and Payment of Claims Generally
(Repealed)

39-72-401. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

39-72-402. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979; amd. Sec. 12, Ch. 558, L. 1991.

39-72-403. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1; amd. Sec. 2, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 25, Ch. 243, L. 1995; amd. Sec. 21, Ch. 442, L. 1999.

39-72-404. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

39-72-405. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979; amd. Sec. 3, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 16, Ch. 555, L. 1993; amd. Sec. 18, Ch. 377, L. 1999.

39-72-406. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.

39-72-407. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).

39-72-408. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305; amd. Sec. 1, Ch. 368, L. 2001.

Part 5
Pneumoconiosis
(Repealed)

39-72-501. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.

39-72-502. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.

39-72-503. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1).

39-72-504. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(2).

39-72-505. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(3).

39-72-506. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(4).

39-72-507. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(5).

39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(6).

39-72-509. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 6, Ch. 104, L. 1979.

Part 6
Medical Examinations — Determining Compensability of Claims
(Repealed)

39-72-601. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979; amd. Sec. 1, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 516, L. 1995; amd. Sec. 22, Ch. 442, L. 1999.

39-72-602. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 23, Ch. 516, L. 1995; amd. Sec. 23, Ch. 442, L. 1999.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.

39-72-605. Repealed. Sec. 23, Ch. 214, L. 2001.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-72-606. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 18, Ch. 214, L. 2001.

39-72-607. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 442, L. 1999.

39-72-608. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979; amd. Sec. 2, Ch. 162, L. 1989; amd. Sec. 17, Ch. 555, L. 1993; amd. Sec. 19, Ch. 377, L. 1999; amd. Sec. 25, Ch. 442, L. 1999; amd. Sec. 19, Ch. 214, L. 2001.

39-72-609. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3); amd. Sec. 64, Ch. 613, L. 1989.

39-72-610. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-72-611. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4); amd. Sec. 64, Ch. 613, L. 1989.

39-72-612. Repealed. Sec. 26, Ch. 442, L. 1999.

History: (1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979; amd. Sec. 3, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 516, L. 1995.

39-72-613. Repealed. Sec. 26, Ch. 442, L. 1999.

History: En. Sec. 14, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Part 7
Compensation and Benefits
(Repealed)

39-72-701. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.

39-72-703. Repealed. Sec. 38, Ch. 416, L. 2005.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

39-72-704. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 26, Ch. 243, L. 1995.

39-72-705. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.

39-72-706. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981; amd. Sec. 4, Ch. 162, L. 1989.

39-72-707. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.

39-72-708. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.

39-72-709. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.
History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.

39-72-711. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979; amd. Sec. 4, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 53, Ch. 7, L. 2001.

39-72-712. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 64, Ch. 613, L. 1989.

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.
History: En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.

39-72-714. Repealed. Sec. 38, Ch. 416, L. 2005.
History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 377, L. 1999.

CHAPTER 73
SILICOSIS BENEFITS

Part 1 — General Provisions

39-73-101. Definitions.
39-73-102. Administration — duties of department.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits when person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.
39-73-111. Representative payee — appointment — duties.

Part 1
General Provisions

Part Cross-References
Definitions, 39-73-101.

39-73-101. Definitions. (1) “Examining board” means a well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term “gainful occupation” may not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but means any person having an income from any other source exceeding $350 a month.

(3) “Payments” means money payments to persons having silicosis.

(4) “Silicosis” means a fibrotic condition of the lungs due to the inhalation of silica dust.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 474, L. 2005; amd. Sec. 1, Ch. 232, L. 2007.

39-73-102. Administration — duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the applicant's place of residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002; amd. Sec. 2, Ch. 370, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1553, Ch. 56, L. 2009.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-73-103. Conformity with acts of federal government. If the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, the department of labor and industry is authorized to administer the grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter may not exceed $350 a month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 20, Ch. 214, L. 2001; amd. Sec. 2, Ch. 474, L. 2005; amd. Sec. 2, Ch. 232, L. 2007.

39-73-104. Eligibility requirements for benefits. Payment must be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, that results in the person's total disability so as to render it impossible for the person to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which the person would receive a payment under this chapter, compensation under 39-71-715 equal to the sum of $350.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981; amd. Sec. 33, Ch. 416, L. 2005; amd. Sec. 3, Ch. 474, L. 2005; amd. Sec. 3, Ch. 232, L. 2007; amd. Sec. 58, Ch. 2, L. 2009; amd. Sec. 25, Ch. 112, L. 2009.

39-73-105. Application for payment. Application for payment under this chapter must be made by the person seeking the payment to the department of labor and industry. The application must be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign the applicant's name on the application, a witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1554, Ch. 56, L. 2009.

39-73-106. Investigation of applications. (1) Whenever the department of labor and industry under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the department. The investigation of such applicant shall be conducted by representatives of the department. The physicians or physician designated by the department, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the department shall determine whether or not the applicant is entitled to a payment under this chapter. The department shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007; amd. Sec. 64, Ch. 613, L. 1989.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions provided in this chapter, any person who has silicosis and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled to payment under this chapter for silicosis must be granted a payment by the department of $350 a month, subject to any additional appropriations. If the person is receiving payments under 39-71-715 that are less in the aggregate than $350, then the person is entitled to a payment under this chapter of the difference between the amount received under 39-71-715 and $350 a month. The legislature shall authorize additional appropriations that may be necessary to make the increased monthly payments provided in this section.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 21, Ch. 214, L. 2001; amd. Sec. 34, Ch. 416, L. 2005; amd. Sec. 4, Ch. 474, L. 2005; amd. Sec. 4, Ch. 232, L. 2007.

39-73-108. Payment of benefits when person entitled is in institution. If a person who is entitled to benefits under this chapter is an inmate in any Montana state institution, benefits may not be paid to the person but must be paid to the person's beneficiary, if any, as defined in 39-71-116.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c); amd. Sec. 9, Ch. 480, L. 1991; amd. Sec. 1555, Ch. 56, L. 2009.

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as the spouse remains unmarried, is entitled to receive the payments granted to the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) but whose spouse died prior to March 14, 1974, is eligible to begin receiving $350 a month.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979; amd. Sec. 22, Ch. 214, L. 2001; amd. Sec. 5, Ch. 474, L. 2005; amd. Sec. 5, Ch. 232, L. 2007.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

39-73-111. Representative payee — appointment — duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for the payments or the person's beneficiary if the department determines that the appointment is in the best interests of the person or the person's beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or the person's beneficiary.

(2) To determine the best interests of the eligible person or the person's beneficiary for appointment of a representative payee, the department may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The department shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for the appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or the person's beneficiary in handling payments received; and

(b) maintain and expend the funds for the benefit and best interests of the eligible person or the person's beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

History: En. Sec. 1, Ch. 69, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1556, Ch. 56, L. 2009.

CHAPTER 74
CRITICAL INCIDENT STRESS MANAGEMENT

Part 1 — General Provisions

39-74-101. Short title.
39-74-102. Policy.
39-74-103. Purpose.
39-74-104. Definitions.
39-74-105. Critical incident meetings closed — confidentiality — exceptions.

Part 1
General Provisions

Part Cross-References

Right of public participation in government, Art. II, sec. 8, Mont. Const.
Right to know, Art. II, sec. 9, Mont. Const.
Right of privacy, Art. II, sec. 10, Mont. Const.
Public participation in governmental operations, Title 2, ch. 3.

39-74-101. Short title. This chapter may be cited as the "Critical Incident Stress Management Act".

History: En. Sec. 1, Ch. 238, L. 2009.

39-74-102. Policy. In order to promote the resiliency and well-being of Montana emergency service providers, it is the policy of the state of Montana to encourage the practice of critical incident stress management.

History: En. Sec. 2, Ch. 238, L. 2009.

39-74-103. Purpose. (1) It is the purpose of this chapter to recognize the importance of critical incident stress management and to protect the integrity of the critical incident stress management process.

(2) The legislature finds that, in some cases of dealing with extreme psychological stress or trauma that has resulted from a response to a critical incident, the privacy of the emergency service provider exceeds the merits of public disclosure.

History: En. Sec. 3, Ch. 238, L. 2009.

39-74-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Critical incident" means an event that results in acute or cumulative psychological stress or trauma to an emergency service provider as a result of response to the incident.

(2) "Critical incident stress" means an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning and that results from the response to a critical incident. This may include but is not limited to physical and emotional illness, failure of usual coping mechanisms, loss of interest in the job, personality changes, or loss of ability to function.

(3) "Critical incident stress management" means a process of crisis intervention designed to assist emergency service personnel in coping with the psychological trauma resulting from response to a critical incident.

(4) "Critical incident stress management and response services" means consultation, counseling, debriefing, defusing, intervention services, management, prevention, and referral provided by a critical incident stress management team member to emergency service personnel.

(5) "Critical incident stress management team" means the group of one or more trained volunteers or paid professionals who offer critical incident stress management and response services following a critical incident.

(6) "Critical incident stress management team member" or "team member" means an individual specially trained to provide critical incident stress management and response services as a member of an organized team or emergency services provider agency.

(7) "Emergency service provider" or "emergency service personnel" means a law enforcement officer, firefighter, emergency medical service provider, dispatcher, rescue service provider, or other personnel who provide emergency response services.

History: En. Sec. 4, Ch. 238, L. 2009.

39-74-105. Critical incident meetings closed — confidentiality — exceptions. (1) To protect the privacy rights of an emergency service provider in receiving critical incident stress management and response services, critical incident stress management debriefing meetings and other critical incident stress management and response services meetings are closed to the general public and may be closed to anyone who was not directly involved in the critical incident that is the subject of the meeting.

(2) Any information divulged to the team during the provision of critical incident stress management and response services must be kept confidential and may not be disclosed to a third party or in a criminal, civil, or administrative proceeding unless the merits of disclosure exceed the demands of an individual's privacy. Records kept by critical incident stress management team members are not subject to subpoena, discovery, or introduction into evidence in a criminal, civil, or administrative action.

(3) The confidentiality privilege provided in subsections (1) and (2) does not apply:

(a) for the appropriate referral to or consultation with other critical incident stress management team members or related qualified professionals;

(b) if the emergency service provider conveys that the provider is an imminent threat to the provider or anyone else or if the provider appears to be an imminent threat to the provider or anyone else;

(c) if the emergency services provider divulges information regarding a past, present, or future criminal act that does not involve the critical incident;

(d) if the emergency service provider or the provider's legal guardian gives consent;

(e) if the emergency service provider is deceased; or

(f) to the facts divulged by the emergency service provider concerning a person injured in a critical incident and the services and care provided to or withheld from that person by an emergency service provider.

History: **En. Sec. 5, Ch. 238, L. 2009.**

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